

No. 11002

United States
Circuit Court of Appeals
For the Ninth Circuit.

PEOPLES BANK,

Appellant,

vs.

FEDERAL RESERVE BANK OF SAN FRAN-
CISCO and HENRY F. GRADY, Federal
Reserve Agent,

Appellees.

and

FEDERAL RESERVE BANK OF SAN FRAN-
CISCO,

Appellant,

vs.

PEOPLES BANK,

Appellee.

Transcript of Record

Upon Appeals from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

APR 23 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF PROCTORS.

Messrs. SANNER, FLEMING & IRWIN,
JOHN AMOS FLEMING,

5658 Wilshire Boulevard,
Los Angeles, California.

WILLKIE, OWEN, OTIS, FARR & GAL-
LAGHER, CARL M. OWEN,

15 Broad Street,
New York, New York.

Attorneys for Plaintiff and Appellant
and Cross-Appellee.

Messrs. ALBERT C. AGNEW,
JOHN A. O'KANE,

Federal Reserve Bank Building,
400 Sansome Street,
San Francisco, California.

Attorneys for Defendant and Appellee
and Cross-Appellant, Federal Re-
serve Bank of San Francisco.

Messrs. FRANK J. HENNESSY,

United States Attorney,
Northern District of California.

WILLIAM E. LICKING,

Assistant United States Attorney,
Northern District of California.
Post office Building,
San Francisco, California.

NAMES AND ADDRESSES OF PROCTORS—
(Continued)

J. P. DREIBELBIS,
GEORGE V. VEST,

Board of Governors of the Federal Reserve System,
Washington, D. C.

ROBERTSON, LEACHMAN, PAYNE,
GARDERE & LANCASTER, NETH L.
LEACHMAN, Of Counsel,

505 Republic Bank Building,
Dallas, Texas.

Attorneys for Defendant and Appellee, Henry F. Grady, Federal Reserve Agent.

In the District Court of the United States, Northern District of California, Southern Division

No. 23243-R

PEOPLES BANK,

Plaintiff,

v.

FEDERAL RESERVE BANK OF SAN FRANCISCO, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, and HENRY F. GRADY, Federal Reserve Agent, Defendants.

COMPLAINT

I.

(a) Jurisdiction is founded on the existence of a Federal question arising under Sections 1 and 8, Article I and the Fifth Amendment to the Constitution of the United States, and under Sec. 9 of the Federal Reserve Act as amended (12 U.S.C.A. 321-328, incl.).

(b) Jurisdiction of this Court is invoked under Sections 24 (1) (14), and 274d of the Judicial Code (28 U.S.C.A. 41, 400); and under Sec. 25(b) of the Federal Reserve Act as amended. (12 U.S.C.A. 632). The matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars (\$3,000.). [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

II.

Plaintiff is, and at all times hereinafter mentioned was, a state banking corporation organized and existing under the laws of the State of California, with its principal place of business in Lakewood Village, County of Los Angeles, State of California; plaintiff is a member of the Federal Reserve System. (Federal Reserve Act as amended, Sec. 9, 12 U.S.C.A. 321).

III.

Defendant, the Federal Reserve Bank of San Francisco, is a federal reserve bank organized under the laws of the United States, and particularly under the provisions of Section 2 of the Federal Reserve Act as amended (12 U.S.C.A. 281-290, incl.) and maintains its principal office in San Francisco, California; defendant, Board of Governors of the Federal Reserve System, is an agency organized and existing under the laws of the United States (Section 10, Federal Reserve Act as amended, 12 U.S.C.A. 241); defendant, Henry F. Grady, Federal Reserve Agent, is Chairman of the Board of Directors of the Federal Reserve Bank of San Francisco, and maintains, under Regulations by the Board of Governors of the Federal Reserve System, a local office of said Board on the premises of the said Federal Reserve Bank of San Francisco, and acts as official representative of said Board of Governors of the Federal Reserve System, for the performance of the functions conferred upon it by the Federal Reserve Act in the

Twelfth Federal Reserve District. (Section 4, Federal Reserve Act as amended, 12 U.S.C.A. 305). [2]

IV.

On or about November 28, 1941, plaintiff, desiring to become a member of the Federal Reserve System, made application to defendant, the Board of Governors of the Federal Reserve System, under such rules and regulations as it had then prescribed for the right to subscribe to stock of the defendant, the Federal Reserve Bank of San Francisco, which was and is the Federal Reserve Bank organized within the Twelfth Federal Reserve District, which is the District within which plaintiff was then, and is now, located. On or about May 6, 1942, the Board of Governors of the Federal Reserve System approved the said application of the plaintiff and gave its permission to the plaintiff to become a stockholder of the Federal Reserve Bank of San Francisco, subject to certain conditions. Among said conditions was the following:

“4. If, without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation or any unit of the Transamerica group, including Bank of America National Trust and Savings Association, or any holding company affiliate or any subsidiary thereof, acquires, directly or indirectly, through the mechanism of extension of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of

usual correspondent bank relationships, such bank, within 60 days after written notice from the Board of Governors of the [3] Federal Reserve System, shall withdraw from membership in the Federal Reserve System.’’

Plaintiff claims and alleges that the foregoing condition is arbitrary, unreasonable, capricious, discriminatory, ultra vires, and null and void in all respects, in that no power has been conferred upon the said defendant, Board of Governors of the Federal Reserve System, to exact of the plaintiff, or any other applying bank, such a condition to ownership of stock in a Federal Reserve Bank, or to membership in the Federal Reserve System.

V.

On or about May 7, 1942, the defendant, the Federal Reserve Bank of San Francisco, informed the plaintiff that as a condition to its subscribing to the stock of the defendant, Federal Reserve Bank of San Francisco, it would be required by said Bank to accept the said condition No. 4 and to agree to comply with the same and all thereof, said acceptance of said agreement to be evidenced by a resolution of its board of directors. Whereupon, and on or about May 12, 1942, the plaintiff, being desirous of acquiring the said stock in the defendant bank and of becoming a member of the Federal Reserve System, and under the compulsion of the said requirement of said defendant, did, by resolution of its board of directors, accept the said con-

dition No. 4, and agreed to comply with the same; that in exacting of plaintiff acceptance of said null and void condition No. 4, defendant, the Federal Reserve Bank of San Francisco, through its board of directors, violated the obligation, imposed upon it by statute, to administer its affairs, fairly and impartially, and without [4] discrimination against plaintiff as a member bank; thereafter thirty-four (34) shares of the capital stock of the Federal Reserve Bank of San Francisco were paid for by and were issued to plaintiff, and plaintiff is now the owner of said shares. The ownership of shares of defendant, Federal Reserve Bank of San Francisco, by plaintiff is an incident and condition to its membership in the said Federal Reserve System. (Sec. 9, Federal Reserve Act as amended, 12 U.S.C.A. 321, 328).

VI.

On or about the 17th day of February, 1944, without the assistance or prior knowledge of plaintiff, said Transamerica Corporation became the owner of five hundred (500) shares out of five thousand (5,000) shares of the capital stock of plaintiff and said shares have been transferred into the name of and issued to said Transamerica Corporation. Plaintiff is informed and believes, and therefore alleges, upon information and belief, that the acquisition of said shares was made without the written approval of defendant, the Board of Governors of the Federal Reserve System, and falls within the purview of condition 4 of the con-

ditions imposed upon plaintiff by defendant, the Federal Reserve Bank of San Francisco.

VII.

On or about April 4, 1944, plaintiff notified the defendant, Board of Governors of the Federal Reserve System, of said acquisition of stock of plaintiff by said Transamerica Corporation. [5]

VIII.

Defendants assert and contend that said condition No. 4 is in all respects valid and enforceable against the plaintiff and empowers the defendant, Federal Reserve Bank of San Francisco, to cancel the shares of said bank owned by plaintiff and to terminate plaintiff's membership in the Federal Reserve System; upon information and belief, plaintiff alleges that defendants intend to and will, unless restrained, take proceedings, predicated on said condition No. 4, designed to deprive plaintiff of its ownership of said shares of defendant, Federal Reserve Bank of San Francisco, and of membership in the Federal Reserve System, and of all the benefits thereof, to the great and irreparable injury and damage of plaintiff, and that such proceedings are imminent.

Plaintiff on the contrary asserts that the requirement by defendants, that as a condition precedent to the acquisition of stock of defendant, the Federal Reserve Bank of San Francisco, plaintiff should accept the said condition 4 and agree to comply therewith, is in all respects without authority in

law, and is unreasonable, arbitrary, capricious and discriminatory, and is invalid, null and void.

Plaintiff further asserts that defendants, or any of them, have no power or authority to take any proceedings predicated on said condition No. 4, designed to deprive plaintiff of its ownership of shares of the defendant, the Federal Reserve Bank of San Francisco, and of membership by the plaintiff in the Federal Reserve System; plaintiff further asserts that said void condition No. 4 is a cloud upon the title to the said shares of defendant, the Federal Reserve Bank of San Francisco, owned by plaintiff. [6]

IX.

That by reason of the premises there exists between the parties to this action an actual, justiciable controversy within the purview of the Federal Declaratory Judgment Act, Section 274d of the Judicial Code (28 U.S.C.A. 400), and plaintiff is entitled to have its rights adjudged and declared in this action.

X.

Plaintiff is immediately confronted with great irreparable loss, damage and injury as a result of said void, improper, ultra vires and discriminatory condition 4 imposed upon plaintiff by defendants. Unless relief be granted, as hereinafter prayed, plaintiff will incur irreparable and substantial loss and injury; there is no other adequate remedy available to plaintiff.

XI.

Plaintiff has at all times complied with all of the requirements of Section 9 of the Federal Reserve Act as amended (12 U.S.C.A. 324) the other pertinent statutes of the United States and with all lawful rules, regulations and conditions of the Board of Governors of the Federal Reserve System, and is entitled under said statutes and regulations to retain its stock in the defendant Federal Reserve Bank of San Francisco, and its membership in the Federal Reserve System, and is desirous of so retaining said stock and membership.

Wherefore, plaintiff demands that the Court adjudge decree and declare: [7]

1. The rights and legal relationships of the plaintiff and the defendants in the premises.

2. That said condition No. 4, hereinabove set forth, is unauthorized by law and beyond the power of said defendants or any of them to impose, and is invalid, null and void.

3. That the defendants and each of them, and the officers, attorneys and agents of each of them, be permanently restrained from the enforcement of said condition, or from taking any steps predicated thereon to effectuate the cancellation of plaintiff's stock in the defendant, Federal Reserve Bank of San Francisco, and the termination of plaintiff's membership in the Federal Reserve System.

4. That the defendants and each of them, and the officers, attorneys and agents of each of them, be restrained pendente lite from the enforcement

of said condition, or from taking any steps predicated thereon to effectuate the cancellation of plaintiff's stock in the defendant, Federal Reserve Bank of San Francisco, and the termination of plaintiff's membership in the Federal Reserve System.

5. Such other, further and different relief as the Court may deem equitable and meet in the premises.

SANNER, FLEMING & IRWIN
JOHN AMOS FLEMING
WILLKIE, OWEN, OTIS,
FARR & GALLAGHER
CARL M. OWEN

Attorneys for Plaintiff.

[8]

State of California,

City and County of San Francisco. ss.

John Amos Fleming, being duly sworn, deposes and says:

That he is one of the attorneys for the plaintiff in the foregoing complaint, and makes this verification for and on behalf of said plaintiff, because no officer of said plaintiff is within the Northern District of California, Southern Division; that he has read the foregoing complaint and the same is true as of his own knowledge and belief except as to matters therein stated upon information and belief, and as to such matters he believes it to be true.

JOHN AMOS FLEMING

Subscribed and sworn to before me this 4th day of April, 1944.

[Seal]

RUTH MATUSCH

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires January 3, 1947.

[Endorsed]: Filed Apr. 6, 1944 [9]

[Title of District Court and Cause.)

MOTION OF DEFENDANT FEDERAL RESERVE BANK OF SAN FRANCISCO TO DISMISS

Comes now, defendant Federal Reserve Bank of San Francisco, and files this, its motion to dismiss the Complaint of plaintiff, on file herein, and for grounds thereof states:

I.

The said Complaint fails to state a claim against this defendant upon which relief can be granted.

II.

It appears upon the face of said Complaint that defendant Board of Governors of the Federal Reserve System, an administrative body of the executive branch of the Government of the United States and an independent board or establishment of the United States, is an indispensable party to this suit and that this is a suit against the United States,

and it [10] further appears that the United States has not been joined as a party defendant hereto and has not consented to be sued.

III.

It appears upon the face of said Complaint that defendant Board of Governors of the Federal Reserve System is the only proper defendant named, if it may be sued at all, that such defendant is an inhabitant of the District of Columbia, without the Northern District of California, that the process of this Court will not reach said defendant in this action, and that the said action will be futile unless said defendant consents to appear herein.

IV.

It appears upon the face of said Complaint that the individual members of defendant Board of Governors of the Federal Reserve System, in their official capacities as such members, are indispensable parties to this suit and have not been joined as parties defendant, that such members, and each of them, in their official capacities, are inhabitants of the District of Columbia, without the Northern District of California, that the process of this Court will not reach such members, in said capacities, in this action, and that the said action will be futile unless said members are joined as parties defendant in said capacities, and each such member consents to appear herein.

V.

It appears upon the face of said Complaint that

this defendant Federal Reserve Bank of San Francisco did not, and does not now, have any power, authority, jurisdiction, or discretion whatever, to do the things which are charged in said Complaint, and which the Complaint seeks to enjoin, or as to which it seeks a declaration.

VI.

The Complaint fails to allege how, or in what manner, this defendant informed plaintiff that, as a condition to its subscribing to the stock of defendant Federal Reserve Bank of San Francisco, it would be re- [11] quired by said bank to accept condition No. 4 and to agree to comply with the same and all thereof, as alleged in Paragraph V of said Complaint.

VII.

The Complaint fails to allege how, or in what manner, this defendant compelled or coerced plaintiff to accept said condition, as a condition of membership in the Federal Reserve System, as alleged in Paragraph V of said Complaint, when such membership is purely voluntary, or how, or in what manner, this defendant could have compelled or coerced plaintiff as alleged, or whether this defendant has any power, authority, jurisdiction, or discretion, statutory or otherwise, with respect to said matter.

VIII.

The Complaint fails to allege how, or in what manner, this defendant exacted of plaintiff said condition, or how, or in what respects, such exaction

constituted a violation of the statutory obligation imposed upon defendant bank, through its board of directors, to administer its affairs fairly and impartially, and without discrimination in favor of, or against any member bank, or banks, when at the time of the claimed exaction of said condition, plaintiff was not, and could not have been, a member bank of the Federal Reserve System, within the meaning of the statute imposing the obligation, and was not, and could not have been, entitled to the benefit thereof.

IX.

The Complaint fails to allege the time when, or the manner in which, this defendant asserted, and/or contended, that condition No. 4 was in all, or any respects, valid and/or enforceable against plaintiff, and/or empowered this defendant to cancel the shares of stock of defendant bank owned by plaintiff, and/or to terminate plaintiff's membership in the Federal Reserve System.

X.

The Complaint fails to allege what proceedings, if any, are intended to be taken by this defendant, predicated on condition No. 4, as alleged in Paragraph VIII of said Complaint. [12]

XI.

The Complaint fails to show that plaintiff is threatened with, or in danger of suffering, any immediate, irreparable damage or injury, by reason of any of the matters set forth in said Complaint.

XII.

The Complaint fails to allege how, or in what manner, said condition No. 4 constitutes, or is, a cloud on plaintiff's title to the shares of stock owned by it in defendant bank, as alleged in Paragraph VIII of said Complaint.

XIII.

It appears upon the face of said Complaint that the question as to the validity of said condition No. 4 raised by plaintiff, may be asserted by it in the administrative proceedings, or hearing, before defendant Board of Governors of the Federal Reserve System, provided by statute for the forfeiture of plaintiff's membership in said system and the surrender by it of its stock in defendant Federal Reserve Bank, if any such proceeding is hereafter instituted, that such proceeding has not been instituted or taken, and that plaintiff's suit is premature, at least until the exhaustion of said administrative remedy.

XIV.

It appears upon the face of said Complaint that no actual controversy exists within the meaning of Section 274d of the Judicial Code (U.S. Code, Title 28, Sec. 400), and that this is not a proper case for a declaratory judgment.

XV.

The Complaint fails to allege, as to this defendant, any case or controversy properly within the jurisdiction of this Court, and the Court is without

jurisdiction of the subject matter sought to be alleged in said Complaint.

XVI.

The Complaint fails to allege in what particulars, in what capacity, [13] or in what manner, defendant Henry F. Grady, Federal Reserve Agent, performed any functions whatever in connection with the subject matter of plaintiff's Complaint, or what proceedings are intended to be taken by said defendant, as alleged in Paragraph VIII of said Complaint.

XVII.

It does not appear in said Complaint, nor can it be ascertained therefrom, whether defendant Federal Reserve Bank of San Francisco is sued herein in its individual corporate capacity, or as agent for defendant Board of Governors of the Federal Reserve System, or said other defendant Henry F. Grady, Federal Reserve Agent.

Said motion to dismiss the Complaint herein will be made and based upon all of the files, papers and proceedings in this cause, including said Complaint, this motion and the notice of the hearing thereof, and upon the attached memorandum of points and authorities.

Dated: San Francisco, California, May 29, 1944.

ALBERT C. AGNEW

Counsel for Defendant Federal Reserve Bank of San Francisco

JOHN A. O'KANE

Of Counsel [14]

NOTICE OF MOTION

To: Peoples Bank, the plaintiff above named, Messrs. Sanner, Fleming & Irwin and John Amos Fleming, 5658 Wilshire Boulevard, Los Angeles, California, and Messrs. Willkie, Owen, Otis, Farr & Gallagher, and Carl M. Owen, 15 Broad Street, New York City, its attorneys.

You, and each of you, will please take notice that the undersigned will bring the foregoing motion to dismiss plaintiff's Complaint on for hearing before this Court in the Court Room of the Honorable Michael J. Roche, Judge of the above entitled Court, located in the Post Office Building, at 7th and Mission Streets, in the City and County of San Francisco, State of California, on the 10th day of June, 1944, at 9 o'clock a.m., of said day or as soon thereafter as counsel can be heard.

Dated: San Francisco, California, May 29, 1944.

ALBERT C. AGNEW

Counsel for Defendant Federal Reserve Bank of San Francisco

JOHN A. O'KANE

Of Counsel

[Endorsed]: Filed May 31, 1944. [15]

[Title of District Court and Cause.]

MOTION OF DEFENDANT FEDERAL RESERVE BANK OF SAN FRANCISCO FOR SUMMARY JUDGMENT.

Comes now, the defendant Federal Reserve Bank of San Francisco, and without prejudice to its right to have its Motion to Dismiss, filed contemporaneously herewith, granted, and without waiving its said motion, files this, its further motion for an order giving summary judgment to said defendant pursuant to Rule 56 of the Federal Rules of Civil Procedure, upon the following grounds, to-wit: that the Complaint in said action and the affidavit of William A. Day in support of this motion, served and filed herewith, shows that as between plaintiff and this defendant there is no genuine issue as to any material fact and that this defendant is entitled to a judgment as a matter of law.

Said motion will be made and based upon all of the files, papers and proceedings in this cause, including said Complaint, affidavit of William A. Day, this motion, and the notice of the hearing thereof, and upon the attached memorandum of points and authorities.

Dated: San Francisco, California, May 29, 1944.

ALBERT C. AGNEW

Counsel for Defendant Federal Reserve Bank of San Francisco

JOHN A. O'KANE

Of Counsel [16]

NOTICE OF MOTION

To: Peoples Bank, the plaintiff above named,
Messrs. Sanner, Fleming & Irwin and John
Amos Fleming, 5658 Wilshire Boulevard, Los
Angeles, California, and Messrs. Willkie, Owen,
Otis, Farr & Gallagher, and Carl M. Owen, 15
Broad Street, New York City, its attorneys.

You, and each of your, will please take notice
that the undersigned will bring the above Motion
on for hearing before this Court in the Court Room
of the Honorable Michael J. Roche, Judge of the
above entitled Court, located in the Post Office
Building, at 7th and Mission Streets, in the City
and County of San Francisco, State of California,
on the 19 day of June, 1944, at 10 o'clock a.m., of
said day or as soon thereafter as counsel can be
heard.

Dated: San Francisco, California, May 29, 1944.

ALBERT C. AGNEW

Counsel for Defendant Fed-
eral Reserve Bank of San
Francisco

JOHN A. O'KANE

Of Counsel

[Endorsed]: Filed May 31, 1944. [17]

[Title of District Court and Cause.]

AFFIDAVIT OF WILLIAM A. DAY IN SUP-
PORT OF MOTION OF DEFENDANT
FEDERAL RESERVE BANK OF SAN
FRANCISCO FOR SUMMARY JUDGMENT

State of California,

City and County of San Francisco—ss.

William A. Day, being first duly sworn, deposes
and says:

That affiant has read the Complaint of plaintiff
Peoples Bank, on file herein, and that he knows
the contents thereof; that affiant is, and was, at all
of the times mentioned in said Complaint, an officer
of defendant, Federal Reserve Bank of San Fran-
cisco, to-wit, the President thereof, and that he is
duly authorized to make, and makes, this affidavit
for and on behalf of defendant Federal Reserve
Bank of San Francisco, in support of said defend-
ant's Motion for Summary Judgment on file here-
in; [21]

That affiant has caused an examination to be
made of the records and files of defendant Fed-
eral Reserve Bank of San Francisco, hereinafter
referred to as "Reserve Bank," respecting the acts
and conduct of said defendant concerning plain-
tiff's application for membership in the Federal
Reserve System, plaintiff's ownership of shares of
stock in defendant Reserve Bank, which is an in-
cident and condition of said membership, and the
granting of said application on conditions, particu-
larly condition No. 4, which constitutes the subject

matter of plaintiff's Complaint, and that of his own knowledge said records and files reveal the following facts:

That on or about the 17th day of October, 1941, defendant Reserve Bank received a letter dated October 15, 1941, signed by Clyde Doyle, an attorney at law, addressed to Mr. H. A. Sonne, former Chief Examiner of defendant Reserve Bank, in which Mr. Doyle, on behalf of said plaintiff Peoples Bank, then in process of organization and incorporation as a state bank, made informal application for membership in the Federal Reserve System; that the concluding paragraph of said letter is as follows:

“It is the desire of the group to move forward as expeditiously as possible in this connection. Your forwarding of the necessary application by return mail, and informing us of the information required to be supplied, will be appreciated, for which I thank you in advance.”

That on or about the 20th day of October, 1941, a copy of said letter was mailed by defendant Reserve Bank to defendant Board of Governors of the Federal Reserve System, hereinafter referred to as “Board,” and on or about the 21st day of October, 1941, defendant Reserve Bank replied thereto; that attached hereto, marked Exhibit A, hereby referred to and made a part hereof, [22] is a full, true and correct copy of defendant Reserve Bank's reply, dated October 21, 1941; that said defendant in said letter acknowledged receipt of

plaintiff's letter, called attention to the provisions of Section 9 of the Federal Reserve Act, as amended, and Regulation H, issued by the defendant Board pursuant thereto, respecting applications for membership by state banks in the Federal Reserve System, and the fact that, under the provisions thereof, an application could not be entertained by said defendant Board thereunder until plaintiff was organized and incorporated; that there was enclosed with said letter three sets of form of application, prepared and furnished by said defendant Board, for use by plaintiff Peoples Bank when said incorporation had been accomplished; that said letter further advised Mr. Doyle with respect to the completion of said application and the filing of an original and copy thereof with defendant Reserve Bank, as required by defendant Board under the provisions of said Regulation H, and Mr. Doyle was informed that as soon after receipt of said application as would be practicable, an investigation would be made by defendant Reserve Bank, which is usual in such cases, after which, the application would be forwarded by defendant Reserve Bank to defendant Board for its consideration and action thereon;

Thereafter and on or about the 4th day of December, 1941, defendant Reserve Bank received a letter dated December 2, 1941, signed by Mr. Doyle, enclosing plaintiff's application, in which the following statement is made:

“Enclosed in duplicate original is Application for Membership in the Federal Reserve

System made by Peoples Bank, Lakewood Village, Los Angeles County, California.”

That said application was incomplete in several important respects, and on or about the 5th day of December, 1941, defendant Reserve Bank advised Mr. Doyle of the particulars in [23] which said application was incomplete; that attached hereto, marked Exhibit B, hereby referred to and made a part hereof, is a full, true and correct copy of defendant Reserve Bank’s letter in this regard;

Thereafter and on or about the 27th day of January, 1942, said application of plaintiff Peoples Bank, having been meanwhile completed, was transmitted to the defendant Board, together with the usual report of investigation of applicant made by defendant Reserve Bank under instruction of said defendant Board; that said application was transmitted by defendant Reserve Bank to said defendant Board for its consideration and action thereon without any recommendation of any kind as to the granting or denial thereof made by defendant Reserve Bank;

That thereafter said defendant Board considered said application and on or about the 14th day of February, 1942, acted thereon by denying the same; that attached hereto, marked Exhibit C, hereby referred to and made a part hereof, is a full, true and correct copy of a letter of said defendant Board’s action and requested to advise the plaintiff in which affiant advised of said defendant Board’s action and requested to advise the plaintiff

thereof; that said letter was received by affiant on the 19th day of February, 1942, and plaintiff was advised of defendant Board's action the day following, namely February 20, 1942;

Thereupon and on said February 20, 1942, said plaintiff Peoples Bank forwarded a letter to defendant Reserve Bank, dated the same day, addressed to the defendant Board, in which it acknowledged receipt of the information respecting rejection of its application and requested said defendant Board to reconsider its application in the light of certain changes made in its stock ownership, which changes were set out in the said letter; that attached hereto, marked Exhibit D, hereby referred to and made a [24] part hereof, is a true and correct copy of said letter without the list of stockholders therein referred to as attached;

That this last mentioned letter was received by defendant Reserve Bank on February 21, 1942, and transmitted the same day, airmail, to defendant Board for its consideration, without any comment or recommendation whatever by defendant Reserve Bank with respect thereto, but with the request that defendant Board inform defendant Reserve Bank, by telegram, of its determination with respect to plaintiff's request for reconsideration of its said application; that attached hereto, marked Exhibit E, hereby referred to and made a part hereof, is a full, true and correct copy of said letter of transmittal; that thereafter, and on or about the 25th day of February, 1942, defendant Reserve Bank was advised, by telephone, by defendant Board

that it was unwilling to change its original position and reconsider plaintiff's said application; that thereafter, the same day, defendant Reserve Bank informed plaintiff Peoples Bank, by telephone, of said defendant Board's determination;

Subsequently, and on or about the 11th day of March, 1942, defendant Reserve Bank was advised by telegram from said defendant Board that it would be glad to reconsider the application of plaintiff bank for membership in the Federal Reserve System upon a definite showing, to be made by the directors of plaintiff bank, as outlined in said telegram; that this advice was immediately communicated to plaintiff bank, by defendant Reserve Bank, by letter dated March 11, 1942, in which the showing to be made by said directors of plaintiff bank, as required by said defendant Board, is set forth; that a full, true and correct copy of defendant Reserve Bank's letter in this regard is attached hereto, marked Exhibit F, hereby referred to and made a part hereof;

That on or about the 23rd day of April, 1942 plain- [25] tiff bank agreed to accept defendant Board's proposal for a reconsideration of its application on the showing required, and on or about said last mentioned date forwarded to defendant Reserve Bank a letter dated that day, in which the information and showing required by defendant Board was made; that a true and correct copy of said forwarded letter, without enclosures, is attached hereto, marked Exhibit G, hereby referred to and made a part hereof;

That the showing thus made by plaintiff People's Bank, in response to defendant Board's telegram dated March 11, 1942, was, on the 28th day of April, 1942, forwarded by defendant Reserve Bank to defendant Board for its consideration and decision;

That on the 6th day of May, 1942, defendant Board informed affiant, by telegram, that the application of plaintiff bank for membership in the Federal Reserve System had been approved, subject to certain conditions; that these conditions, including condition No. 4 now complained of by plaintiff, are set forth in a letter of the said defendant Board, dated May 6, 1942, addressed to the Board of Directors of plaintiff bank, which was sent to defendant Reserve Bank for forwarding to plaintiff bank; that immediately upon receipt of said letter, the same was forwarded by defendant Reserve Bank to plaintiff bank, and that a full, true and correct copy thereof is attached hereto, marked Exhibit H, hereby referred to and made a part hereof; that in addition thereto defendant Reserve Bank sent plaintiff bank a letter dated May 7, 1942, informing plaintiff bank of defendant Board's approval of its application on conditions, the particular conditions upon which said application had been approved by said defendant Board and the steps necessary to be taken by plaintiff for the completion of plaintiff's membership in the Federal Reserve System; that a full, true and correct copy of this last mentioned letter is attached hereto,

marked Exhibit I, hereby [26] referred to and made a part hereof;

That on or about the 12th day of May, 1942, plaintiff bank accepted said conditions without objection to any thereof, by resolution of its board of directors, duly adopted, and notified defendant Reserve Bank to that effect by letter dated the same day; that a full, true and correct copy of certified copy of said resolution is attached hereto, marked Exhibit J, hereby referred to and made a part hereof; that a true copy of said last mentioned letter is attached hereto, marked Exhibit K, hereby referred to and made a part hereof; that a true copy of plaintiff's application for membership, referred to in said letter, as originally filed November 28, 1941, is attached hereto, marked Exhibit L, hereby referred to and made a part hereof;

Thereafter, on the 14th day of May, 1942, defendant Reserve Bank addressed a letter to plaintiff Peoples Bank acknowledging receipt of plaintiff's letter dated May 12, 1942, and enclosures, and advising said plaintiff that, as outlined in its letter of May 7, 1942, it would be necessary for plaintiff to make payment of its subscription to the capital stock of defendant Reserve Bank, and open its reserve account with the Los Angeles Branch of defendant Reserve Bank, and to receive from the State Superintendent of Banks authorization to commence business, before membership in the Federal Reserve System would be complete; that a full, true and correct copy of defendant, Reserve Bank's letter in this regard is attached hereto, marked Ex-

hibit M, hereby referred to and made a part hereof;

That later on said 14th day of May, 1942, defendant Reserve Bank advised plaintiff bank, by telegram, that its membership had been completed, said matters as to completion of membership having meanwhile been accomplished by plaintiff Peoples Bank, and that such membership would become effective on May 15, 1942; that later on said 14th day of May, 1942, defendant [27] Reserve Bank, by letter dated that day, confirmed its said telegram as to membership of plaintiff bank in the Federal Reserve System and the said effective date thereof, acknowledged receipt of confirmation by the Los Angeles Branch of defendant Reserve Bank of plaintiff's remittances in payment for the capital stock of defendant Reserve Bank and, among other things, informed plaintiff bank that its formal certificate of membership would be issued and mailed to it by said defendant Board, from Washington, D. C.; that a full, true and correct copy of said defendant Reserve Bank's last mentioned letter, dated May 14, 1942, is attached hereto, marked Exhibit N, hereby referred to and made a part hereof;

That finally on or about the 15th day of May, 1942, defendant Reserve Bank, by letter dated that day, advised plaintiff bank that it had sent plaintiff, under separate cover, a binder containing the current circulars issued by defendant Reserve Bank and a current set of regulations issued by defendant Board, together with a copy of the Federal Reserve Act, as amended, with the suggestion that one of its officers thoroughly familiarize himself therewith in

order that plaintiff bank might obtain the maximum benefit from its membership in said Federal Reserve System; that a full, true and correct copy of said letter dated May 15, 1942, is attached hereto, marked Exhibit O, hereby referred to and made a part hereof; that ever since said 15th day of May, 1942, plaintiff Peoples Bank has been, and now is, a member bank of the Federal Reserve System and the owner of 34 shares of stock of defendant Reserve Bank, which, as aforesaid, is an incident and condition of said membership;

That from the foregoing it is patent, and the fact is, that the defendant Reserve Bank had nothing whatever to do with the consideration or reconsideration of plaintiff's application for membership in the Federal Reserve System, or the original [28] denial or subsequent approval of the same by defendant Board on conditions; that defendant Reserve Bank had nothing whatever to do with the imposition or exaction by said defendant Board of said condition No. 4, or of any other conditions, imposed on, or exacted of, plaintiff bank by defendant Board respecting plaintiff's membership in the Federal Reserve System; that defendant Reserve Bank did not impose on, or exact of, plaintiff said condition No. 4, or any other conditions, and that said defendant made no requirement of plaintiff with respect to the same or the acceptance thereof;

That at all of the times mentioned in plaintiff's Complaint, and at all of the times hereinabove mentioned, defendant Reserve Bank acted purely

in a ministerial and clerical capacity on behalf of defendant Board, and at none of said times did defendant Reserve Bank have, nor has it now, any power, authority, jurisdiction, or discretion whatever, under any existing statute, rule, regulation, or otherwise, concerning the consideration of, or decision on, any application for membership in the Federal Reserve System, including plaintiff's said application, or the imposition or exaction of conditions of membership of any kind, or the making of any requirement with respect thereto, or the removal of any condition once imposed, or the taking of any proceedings, statutory, administrative, or otherwise, for the enforcement of any such conditions; that in this behalf affiant avers that under Section 9 of the Federal Reserve Act, as amended, and Regulation H issued by defendant Board pursuant thereto, said defendant Board at all of the said times had, and now has, sole and exclusive power, authority, jurisdiction and discretion with respect to the said matters, and each and all thereof; affiant further avers that, in addition to lack of power, authority, jurisdiction and discretion respecting the taking of any proceedings, statutory, administrative, or otherwise as to the [29] enforcement of said condition No. 4, as hereinabove averred, defendant Reserve Bank, at none of the times hereinabove or in said Complaint mentioned, has had, or now has, any such intention;

That at no time has defendant Reserve Bank asserted or contended to plaintiff, or to any other person whatever, that said condition No. 4 was,

or is, in all or any respects, valid or enforceable against plaintiff, or empowers said defendant Reserve Bank to cancel the shares of defendant Reserve Bank owned by plaintiff, or to terminate plaintiff's membership in the Federal Reserve system;

That at no time up until the time of the filing of its Complaint in this case did plaintiff bank ever complain, or intimate, to defendant Reserve Bank, its Board of Directors, officers, or employees, or any of them, that it had any complaint whatsoever respecting its treatment by any of said persons in the administration of defendant Reserve Bank's affairs, or that it had not been fairly or impartially treated, or that it had been discriminated against by reason of any matter or thing alleged in plaintiff's said Complaint or any other matter or thing whatsoever.

That affiant is familiar with the duties, statutory and otherwise, of defendant Henry F. Grady, as Federal Reserve Agent, and knows of his own knowledge that said defendant Federal Reserve Agent had nothing whatever to do with the consideration or reconsideration of plaintiff's application for membership in the Federal Reserve System, or the original denial or subsequent approval of the same by defendant Board on conditions; that said defendant Federal Reserve Agent had nothing whatever to do with the imposition or exaction by said defendant Board of said condition No. 4 or any other conditions imposed on, or exacted of, plaintiff bank by defendant Board respecting plaintiff's

membership in the Federal Reserve System; that defendant Federal Re- [30] serve Agent did not impose on, or exact of, plaintiff said condition No. 4 or any other conditions, and that said defendant made no requirement of plaintiff with respect to the same, or the acceptance thereof;

That at none of the times mentioned in plaintiff's Complaint, or hereinabove mentioned, did defendant Federal Reserve Agent have, nor has he now, any power, authority, jurisdiction, or discretion whatever under any existing statute, rule, regulation, or otherwise, concerning the consideration of, or decision on, any application for membership in the Federal Reserve System, including plaintiff's said application, or the imposition or exaction of conditions of membership of any kind, or the making of any requirement with respect thereto, or the removal of any condition once imposed, or the taking of any proceeding, statutory, administrative, or otherwise, for the enforcement of any such conditions; that as aforesaid, said defendant Board, at all of the times mentioned in the Complaint and at all of the times hereinabove mentioned, had, and now has, exclusive power, authority, jurisdiction and discretion with respect to the said matters, and each and all thereof;

That, by reason of the matters and things hereinabove averred, affiant further avers that as between plaintiff Peoples Bank and defendant Federal Reserve Bank of San Francisco, there is no genuine issue as to any material fact and that this

defendant is entitled to a judgment as a matter of law.

Dated: San Francisco, California, May 29, 1944.

WILLIAM A. DAY

Subscribed and sworn to before me this 31st day of May, 1944.

[Seal]

KATHRYN E. STONE

Notary Public in and for the City and County of San Francisco, State of California. [31]

EXHIBIT A

Federal Reserve Bank of San Francisco

October 21, 1941.

Mr. Clyde Doyle

Suite 612, Jergins Trust Building,

Long Beach, California

Re: Your File No. 658

Dear Mr. Doyle:

This is to acknowledge receipt of your letter of October 15, 1941, enclosing a signed copy of letter dated September 24, 1941, addressed to yourself and John Gee Clark by Geo. J. Knox, Superintendent of Banks, in which permission is granted you to proceed with the organization of "People's Bank", Lakewood Village, Los Angeles County, California. It is noted that the permission to organize the bank is based on the condition that Federal Deposit insurance be obtained, to become effective concurrently with the opening of the bank. As a

medium to that end, you have chosen membership in the Federal Reserve System.

Section 9 of the Federal Reserve Act provides that—

“Any bank incorporated by special law of any State, or organized under the general laws of any State of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System”

It, therefore, appears necessary that the organization of the subject bank and its incorporation be completed before an application for membership in the Federal Reserve System is filed.

There are enclosed three sets of approved application forms for your use when incorporation of the institution has been accomplished. There is also enclosed a copy of Regulation H pertaining to membership of State banking institutions in the Federal Reserve System.

When the board of directors has authorized the officers of the bank to make application, the application, together with all exhibits, should be prepared in triplicate and the original and one copy filed with the Federal Reserve Bank of San Francisco—the third copy should be retained for the bank's record. The bank being newly organized and not yet licensed to do business, obviously all exhibits called for in the application cannot be furnished. If the bank shows any assets, a certified

statement of resources and liabilities (Exhibit I) should be attached, as should also certified copies of its articles of incorporation, together with certified copy of the Superintendent of Bank's certificate of approval thereof. Other exhibits seem inapplicable.

As soon after receipt of the application as is practicable, we shall make the investigation which is usual in connection with requests for membership, after which the application will be forwarded to the Board of Governors of the Federal Reserve System, Washington, D. C., for its consideration and action thereon.

Should there arise any questions regarding the preparation or filing of the application, please feel free to call upon us.

Yours very truly,

R. B. WEST

Vice President.

Enclosures

EXHIBIT B

Federal Reserve Bank of San Francisco

December 5, 1941

Mr. Clyde Doyle,
612 Jergins Trust Building,
Long Beach, California.

Dear Mr. Doyle:

This will acknowledge receipt of your letter of December 2, enclosing, in duplicate, the application of "People's Bank", Lakewood Village, Los

Angeles County, California, for membership in the Federal Reserve System.

Affixing the corporate seal of the bank appears to have been overlooked and the page of the application on which it is to be placed is returned herewith. With your letter returning this page, please advise if W. M. Parker is both Secretary and Cashier or whether he holds the title of Cashier only.

We learn from the office of the Superintendent of Banks that the extra copy of the bank's articles of incorporation sent there was returned to you before receipt of your letter requesting that it be delivered to us. Two certified copies of the articles, which we shall appreciate your forwarding to us when available, are required to complete the application.

Our investigation in connection with the application will be made at the earliest possible date and, thereafter, it will be handled for transmission to the Board of Governors of the Federal Reserve System as expeditiously as practicable.

Yours very truly,

R. B. WEST

Vice President.

Enclosure

EXHIBIT C

Board of Governors of the Federal Reserve System
Washington

[Seal]

Address Official Correspondence to the Board

February 14, 1942

Mr. W. A. Day, President,
Federal Reserve Bank of San Francisco,
San Francisco, California.

Dear Mr. Day:

Reference is made to the application of the Peoples Bank of Lakewood Village, California, which has not yet been authorized to commence business, for membership in the Federal Reserve System. The Board has carefully considered the information accompanying this application, together with such other information as it has been able to develop with regard to the application, and has requested me to advise you that it is unwilling to approve the application on the basis of the information now before it. Please advise the applicant accordingly.

Very truly yours,

CHESTER MORRILL

Secretary [35]

EXHIBIT D

February 20, 1942

Board of Governors of the
Federal Reserve System
Washington, D. C.

Re: Membership Application, Peoples
Bank, Lakewood Village, California.

Dear Sirs:

We have just been informed of your action rejecting our application for membership in the Federal Reserve System.

With the thought that a request for reconsideration might possibly be in order, we respectfully direct your attention to the fact that major developments in defense industries adjacent to our proposed location have brought about a need for banking facilities that is far more urgent than when our application for membership was filed with you. There have been some changes made in our stock ownership, and in order that you may be informed of our current position, we wish to advise you that the 1000 shares of stock formerly held by the West Coast Securities Company have been sold to the following individuals who are prominent and well-known residents of Long Beach and immediate vicinity. These shares have been paid for from their own funds.

Clark J. Bonner	200 shares
Ralph B. Clock	200 shares
Chas. B. Hopper	200 shares
Harold R. Pauley	200 shares
Victor W. Hayes	200 shares

Messrs. Bonner, Clock and Hopper, original sponsors of this project, are no doubt dealt with in the report which is before you.

Harold R. Pauley, Vice President of the Petrol Corporation, Los Angeles, California, owns an additional 100 shares of our stock and has replaced his brother, Edwin W. Pauley, on our Board of Directors. Edwin W. Pauley finds it necessary to spend nearly all of his time in Washington. Mr. Harold R. Pauley has an estimated net worth of \$300,000.00.

Mr. Victor W. Hayes, 3519 E. Second Street, Long Beach, California, is a pioneer citizen of Long Beach, is retired from active business and receives a substantial income from oil and rentals.

For your information, we have attached a copy of a new list of our stockholders.

In the light of the above information, we respectfully request that you reconsider our application for membership.

Yours very truly,

PEOPLES BANK

E. B. MARTIN,

Vice President

EXHIBIT E

Federal Reserve Bank of San Francisco

February 21, 1942

Air Mail

Board of Governors of the
Federal Reserve System,
Washington, D. C.

Dear Sirs:

As requested in the Board's letter of February 14, 1942, we have informed the Peoples Bank of Lakewood Village, California, that the Board is unwilling to approve its application for membership in the Federal Reserve System on the basis of the information now before it, and a copy of our letter to the bank is enclosed.

We have now received a letter, dated February 20, 1942, addressed to the Board of Governors by the Peoples Bank, Lakewood Village, requesting the Board's reconsideration of the bank's application, and submitting the additional information that 1,000 shares of its stock originally subscribed for by the West Coast Securities Company has been purchased by and issued to other individual stockholders in equal amounts of 200 shares each.

The above mentioned letter is enclosed without comment or recommendation, but with the request that the Board inform us by wire of its conclu-

sions with respect to the bank's request for reconsideration of its application.

Yours very truly,

R. B. WEST

Vice President.

Enclosures

EXHIBIT F

Federal Reserve Bank of San Francisco

March 11, 1942.

Airmail

Mr. E. B. Martin,

Vice President, Peoples Bank

Lakewood Village,

Los Angeles County, California.

Dear Mr. Martin:

With further reference to your letter of February 20, addressed to the Board of Governors of the Federal Reserve System, requesting reconsideration of your application for membership in the Federal Reserve System, and our telephone conversation of today, we are requested to inform you that the Board of Governors will be glad to reconsider your application upon a definite showing by the directors of your bank—

1. That arrangements have been made by Mr. John S. Griffith, San Marino, California, for financing the purchase of his stock in a manner different from that in effect at the time of our investigation of your bank's application for member-

ship, and that such arrangements are consistent with the other provisions of this letter.

2. That some change has been made in the arrangements for the use of the furniture and fixtures whereby the bank will be under no obligation to Capital Company or any other part of the Transamerica group.

3. That neither Transamerica Corporation nor any organization affiliated or closely identified with Transamerica Corporation or any other bank holding company group has any interest, direct or indirect, in the applicant bank, and that the bank is in no manner obligated to any such organization.

4. That all stockholders have stated in writing that they have no agreements or understandings, expressed or implied, with respect to the sale or transfer of the stock of the bank to any such organization, and that they do not intend to enter into any such agreements or understandings.

5. That the bank was organized as a bona fide local, independent institution, and is expected to be continued as such.

In furnishing the information requested, it will be appreciated if it will be prepared in duplicate, and, upon its receipt, the material will be forwarded to the Board of Governors for its approval.

Yours very truly,

R. B. WEST

Vice President.

EXHIBIT G

Peoples Bank
Lakewood Village, California

April 23, 1942.

Mr. R. B. West, Vice President
Federal Reserve Bank of San Francisco
San Francisco, California

Dear Mr. West:

Replying to your letter of March 11, 1942, we are enclosing all in duplicate:

1. Statement by John S. Griffith relative to the re-financing of the purchase of his stock to meet the first requirement in the Reserve Board's proposal.

2. Copy of Declaration made by all of our directors which deals with Section 2, 3 and 5 of the Reserve Board's proposal.

3. Statement by all of our stockholders to comply with Section 4 of the Reserve Board's proposal.

We wish to offer, as an explanation, the information that at the time Mr. Armstrong made his field examination, a proposal had been made to us by a representative of the Bank of America to loan us some used fixtures, counters, etc., to fit out a temporary location. At that time we were disposed to accept their offer, however, when these used and quite obsolete counters and fixtures were installed some time later, we received a bill dated January 7, 1942, their job No. 4766 from the Capital Company, totaling \$1,104.90 covering the purchase and installation of this equipment. We propose to pay this bill and, consequently, we do not

feel that we are in any way obligated as a result of this transaction.

We shall appreciate your dispatching this information to the Reserve Board in Washington by air mail, requesting a reply by wire. The writer will communicate with you by telephone when this material has reached your desk to determine whether or not it will meet your requirements.

Yours respectfully,

E. B. MARTIN

E. B. Martin

Vice President

Enclosures

EXHIBIT H

Board of Governors of the Federal Reserve System
May 6, 1942.

Board of Directors,
Peoples Bank,
Lakewood Village, California

Gentlemen:

The Board of Governors of the Federal Reserve System approves the application of the Peoples Bank, Lakewood Village, California, for stock in the Federal Reserve Bank of San Francisco, effective if and when the bank is duly authorized to commence business by the appropriate State authorities, subject to the numbered conditions hereinafter set forth:

1. Such bank at all times shall conduct its business and exercise its powers with due regard to the safety of its depositors, and, except with the per-

mission of the Board of Governors of the Federal Reserve System, such bank shall not cause or permit any change to be made in the general character of its business or in the scope of the corporate powers exercised by it at the time of admission to membership.

2. The net capital and surplus funds of such bank shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, and its capital shall not be reduced except with the permission of the Board of Governors of the Federal Reserve System.

3. Such bank shall not engage as a business in issuing or selling either directly or indirectly (through affiliated corporations or otherwise) notes, bonds, mortgages, certificates, or other evidences of indebtedness representing real estate loans or participations therein, either with or without a guarantee, indorsement, or other obligation of such bank or an affiliated corporation.

4. If, without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation or any unit of the Transamerica group, including Bank of America National Trust and Savings Association, or any holding company affiliate or any subsidiary thereof, acquires, directly or indirectly, through the mechanism of extension of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of usual correspondent bank relationships, such

bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System.

In connection with the foregoing conditions of membership, particular attention is called to the provisions of the Board's Regulation H regarding membership of State banking institutions in the Federal Reserve System as amended effective November 20, 1939, with especial reference to section 6 thereof. A copy of the regulation is enclosed.

The application for membership has been approved upon representations that the bank is a bona fide local independent institution and that no holding company group has any interest in the bank at the time of its admission to membership, and that the directors and stockholders of the bank have no plans, commitments or understandings looking toward a change in the status of the bank as a local independent institution. Condition of membership numbered 4 is designed to maintain that status.

If at any time a change in or amendment to the bank's charter is made, the bank should advise the Federal Reserve Bank, furnishing copies of any documents involved, in order that it may be determined whether such change affects in any way the bank's status as a member of the Federal Reserve System.

Acceptance of the conditions of membership contained in this letter should be evidenced by a resolution adopted by the Board of Directors and spread upon its minutes, and a certified copy of

such resolution should be filed with the Federal Reserve Bank. Arrangements will thereupon be made to accept payment for an appropriate amount of Federal Reserve Bank stock, to accept the deposit of the required reserve balance and to issue the appropriate amount of Federal Reserve Bank stock to the bank.

The time within which admission to membership in the Federal Reserve System in the manner described may be accomplished is limited to 45 days from the date of this letter, unless the bank applies to the Board and obtains an extension of time. When the Board is advised that all of the requirements have been complied with and that the appropriate amount of Federal Reserve Bank stock has been issued to the bank, the Board will forward to the bank a formal certificate of membership in the Federal Reserve System.

The Board of Governors sincerely hopes that you will find membership in the System beneficial and the relationships with your Reserve Bank pleasant. The officers of the Federal Reserve Bank will be glad to assist you in establishing your relationships with the Federal Reserve System and at any time to discuss with representatives of your bank means for making the services of the System most useful to you.

Very truly yours,

[Signed]

L. P. BETHEA

Assistant Secretary.

Enclosure

EXHIBIT I

Federal Reserve Bank of San Francisco

May 7, 1942.

Airmail

Mr. E. B. Martin,
Vice President, Peoples Bank,
Lakewood Village, California.

Dear Mr. Martin:

We have been advised by the Board of Governors of the Federal Reserve System that the application of Peoples Bank for membership in the Federal Reserve System, and the right to subscribe for stock of the Federal Reserve Bank of San Francisco, has been approved, subject to the following conditions:

1. Such bank at all times shall conduct its business and exercise its powers with due regard to the safety of its depositors, and, except with the permission of the Board of Governors of the Federal Reserve System, such bank shall not cause or permit any change to be made in the general character of its business or in the scope of the corporate powers exercised by it at the time of admission to membership.

2. The net capital and surplus funds of such bank shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, and its capital shall not be reduced except with the permission of the Board of Governors of the Federal Reserve System.

3. Such bank shall not engage as a business in issuing or selling either directly or indirectly (through affiliated corporations or otherwise) notes, bonds, mortgages, certificates, or other evidences of indebtedness, representing real estate loans or participations therein, either with or without a guarantee, indorsement, or other obligation of such bank or an affiliated corporation.

4. If without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation or any unit of the Transamerica group, including Bank of America National Trust and Savings Association, or any holding company affiliate or any subsidiary thereof, acquires, directly or indirectly, through the mechanism of extension of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of usual correspondent bank relationships, such bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System.

Acceptance of the conditions of membership contained in this letter should be evidenced by a resolution adopted by the Board of Directors of your bank and spread upon its minutes. Three copies of a suggested form of such resolution are enclosed, two certified copies of which should be returned to this bank.

Following the adoption of the above resolution, payment for the appropriate number of shares of

stock of the Federal Reserve Bank of San Francisco will be in order, and should be made to the Los Angeles Branch, Federal Reserve Bank of San Francisco, Los Angeles, California, on the following basis:

Fifty per cent of a sum equal to six per cent of the paid-up capital stock and surplus of your bank as of the date upon which membership is accomplished, with instructions to charge your account for accrued dividends on the shares since date of payment of the last dividend.

If six per cent of the paid-up capital and surplus amounts to a sum not divisible by 100, the bank is required to hold one additional share of stock for any excess or fractional part of \$100.00.

Immediate notice of the amount of the charge to your account will be mailed to you, and when the next dividend is declared your account will be credited in an amount to cover the dividend for the full semi-annual period.

It will also be necessary for you to maintain an account with this bank which will be equal to 14 per cent of your demand deposits and six per cent of your time deposits. This will constitute your legal reserve deposit and may be maintained in excess of but not fall below the required percentage without incurring an interest penalty upon the deficiency at a rate fixed by the Board of Governors of the Federal Reserve System. The method of computing reserves is set forth in Federal Reserve Circular 130 and Supplement thereto, copies of which are enclosed for your guidance. Since prior

to commencing business your bank will have no deposits, it is suggested that you open an account with our Los Angeles Branch in sufficient amount to cover the reserve requirements of your anticipated deposits. The above payments may be made either by draft upon your Los Angeles correspondent, or by requesting any other correspondent to transfer the amount for your credit with our Los Angeles Branch, or by remittance of currency, or a combination of these methods.

The resolution adopted by your Board of Directors on November 28, 1941, authorizing membership, among other things, authorizes—that reports and information regarding your bank may be interchanged between the Federal Reserve Bank of San Francisco and State and Federal supervisory authorities having jurisdiction over your bank. In order that a copy of this resolution may be filed with the Superintendent of Banks, it will be appreciated if you will certify two of the three enclosed copies of such resolution, executing the agreement authorized therein, and return them with the other documents to be submitted in connection with your acceptance of membership.

We shall look forward to receiving notice of your acceptance of membership, and sincerely hope the affiliation will prove both beneficial and pleasant.

Yours very truly,

R. B. WEST

Vice President.

Enclosures

EXHIBIT J

APPLICATION FOR MEMBERSHIP IN
THE FEDERAL RESERVE SYSTEM

At a meeting of the Board of Directors, Peoples Bank, Lakewood Village, California, duly called and held on the twenty-eighth day of November, 1941, the following resolution was adopted:

“Whereas, it is the sense of this meeting that application should be made on behalf of this bank for membership in the Federal Reserve System in accordance with the provisions of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto; and

“Whereas, under the provisions of the Federal Reserve Act, such a bank applying for membership in the Federal Reserve System is required to subscribe for stock in a Federal Reserve bank in a sum equal to six per cent of the paid-up capital stock and surplus of such applying bank;

“Now, therefore, be it resolved, That the President or Vice President and the Cashier or Secretary of this bank be and they are hereby authorized, empowered, and directed to make application for and to subscribe to the appropriate number of shares, of a par value of \$100 each, of the capital stock of the Federal Reserve Bank of San Francisco, as determined on the basis of the capital stock and surplus of this bank as of the date upon which its membership in the Federal Reserve System becomes effective; to pay for such stock in

accordance with the provisions of the Federal Reserve Act; to agree for and in behalf of this bank that, upon admission to membership in the Federal Reserve System, it will comply with all the requirements of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant to law which are applicable to State banks and trust companies which become members of the Federal Reserve System; and to agree for and in behalf of this bank that reports and information regarding this bank may be interchanged between the Federal Reserve Bank of San Francisco and all State or Federal supervisory authorities having jurisdiction of this bank."

I hereby certify that the foregoing is a true and complete copy of a resolution duly adopted by the Board of Directors of this bank at a meeting thereof held on the date specified, at which a quorum was present, and that such resolution has not been amended or repealed and is still in full force and effect.

W. M. PARKER

Secretary or Cashier

Peoples Bank, Lakewood Village, California

Pursuant to the foregoing resolution, the Peoples Bank, Lakewood Village, California, hereby makes application for the appropriate number of shares of the capital stock of the Federal Reserve Bank of San Francisco, of a par value of \$100 each, as determined on the basis of the capital stock and sur-

plus of this bank as of the date upon which the membership of this bank in the Federal Reserve System becomes effective; agrees to pay for the same in accordance with the provisions of the Federal Reserve Act; agrees that, upon its admission to membership in the Federal Reserve System, it will comply with all the requirements of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant to law which are applicable to State banks and trust companies which become members of the Federal Reserve System; and agrees that reports and information regarding this bank may be interchanged between the Federal Reserve Bank of San Francisco and all State or Federal supervisory authorities having jurisdiction over this bank.

Peoples Bank, Lakewood Village, California.

By E. B. MARTIN

Vice President

EXHIBIT K

Peoples Bank
Lakewood Village
California

May 12, 1942.

Mr. R. B. West, Vice President
Federal Reserve Bank of San Francisco
San Francisco, California

Dear Mr. West:

We are returning, properly executed, two copies of Resolution of Acceptance and two copies of Ap-

plication for Membership which was originally filed November 28, 1941.

Thanking you for your splendid co-operation, we are

Your respectfully,

E. B. MARTIN

E. B. Martin

Vice President

Inclosures

EXHIBIT L

APPLICATION FOR MEMBERSHIP IN THE FEDERAL RESERVE SYSTEM MADE BY PEOPLES BANK

Lakewood Village, Los Angeles County, California

This application and all exhibits should be forwarded, in duplicate, to the Federal Reserve Agent at the Federal Reserve bank of the district in which the applying institution is located.

Application and exhibits should be fastened together at the top of the page only. In so far as practicable, all exhibits should be furnished on sheets of the same size as this page.

This cover sheet (Form 83) should accompany any application for membership on Forms 83A, 83B, or 83C.

APPLICATION FOR MEMBERSHIP IN THE FEDERAL RESERVE SYSTEM

At a meeting of the Board of Directors, Peoples Bank, Lakewood Village, Los Angeles County,

California, duly called and held on the 28th day of November, 1941, the following resolution was adopted:

“Whereas, it is the sense of this meeting that application should be made on behalf of this bank for membership in the Federal Reserve System in accordance with the provisions of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto; and

“Whereas, under the provisions of the Federal Reserve Act, such a bank applying for membership in the Federal Reserve System is required to subscribe for stock in a Federal Reserve bank in a sum equal to six per cent of the paid-up stock and surplus of such applying bank;

“Now, therefore, be it resolved, That the President or Vice President and the Cashier or Secretary of this bank be and they are hereby authorized, empowered, and directed to make application for and to subscribe to the appropriate number of shares, of a par value of \$100 each, of the capital stock of the Federal Reserve Bank of San Francisco, as determined on the basis of the capital stock and surplus of this bank as of the date upon which its membership in the Federal Reserve System becomes effective; to pay for such stock in accordance with the provisions of the Federal Reserve Act; to agree for and in behalf of this bank that, upon its admission to membership in the Federal Reserve System, it will comply with all the requirements of the Federal Reserve Act and the regulations of the Board of Governors of the Fed-

eral Reserve System made pursuant to law which are applicable to State banks and trust companies which become members of the Federal Reserve System; and to agree for and in behalf of this bank that reports and information regarding this bank may be interchanged between the Federal Reserve Bank of San Francisco and all State or Federal supervisory authorities having jurisdiction of this bank."

I hereby certify that the foregoing is a true and complete copy of a resolution duly adopted by the Board of Directors of this bank at a meeting thereof held on the date specified, at which a quorum was present, and that such resolution has not been amended or repealed and is still in full force and effect.

W. M. PARKER

Secretary or Cashier

PEOPLES BANK

(Legal name of applying bank)

Lakewood Village, Los Angeles County, California,

Pursuant to the foregoing resolution, Peoples Bank, Lakewood Village, Los Angeles County, California, hereby makes application for the appropriate number of shares of the capital stock of the Federal Reserve Bank of San Francisco, of a par value of \$100 each, as determined on the basis of the capital stock and surplus of this bank as of the date upon which the membership of this bank in the Federal Reserve System becomes effective; agrees to pay for the same in accordance with the provisions of the Federal Reserve Act; agrees that,

upon its admission to membership in the Federal Reserve System, it will comply with all the requirements of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant to law which are applicable to State banks and trust companies which become members of the Federal Reserve System; and agrees that reports and information regarding this bank may be interchanged between the Federal Reserve Bank of San Francisco and all State or Federal supervisory authorities having jurisdiction of this bank.

The following exhibits are attached to and made a part of this application:

Exhibit I. Two copies of a certified statement of condition of the bank as of November 28, 1941. (The statement of condition is to be of a current date and, in so far as practicable, in the form appearing on the face of the latest form of report of condition submitted by State member banks to the Board (Form 105) and shall be supplemented by a statement of any contingent liabilities and any assets not shown by its books.)

Exhibit II. Two copies of the report of the latest examination of the bank made by State banking authorities. (The applying bank may, if it desires, request the State Bank Supervisor to forward the copies direct to the Federal Reserve bank.)

Exhibit III. Two copies of all letters of criticism, if any, received from the State banking authorities in connection with the two latest reports

of examination and two copies of replies thereto. (If no replies have been made, a statement should be submitted in duplicate, showing what action has been taken by the bank with respect to the criticisms and requests of the State banking authorities.)

Exhibit IV. Two copies of the charter (certificate of authority to commence business and articles of incorporation of this bank with all amendments to date certified by the appropriate State official. (If applicant has been involved in a consolidation whereby all rights, franchises, and interests of constituent institutions pass by operation of law to the consolidated bank, information should be furnished, in duplicate, as to any corporate powers acquired by the bank by virtue of such consolidation other than those shown in its charter or articles of incorporation.)

Exhibit V. Two copies of a statement of powers or functions that have been or are now being exercised or performed other than those usual to commercial banking. (Full details should be given, in duplicate, if applicant acts directly or indirectly in any fiduciary capacity, insures or guarantees real estate titles, underwrites fidelity bonds or acts as surety, conducts an insurance business, deals in, sells, or distributes stocks or securities to dealers or to the public, sells real estate mortgages, or participations therein, with or without guarantee, conducts a real estate rental or brokerage business, or performs any other functions not necessarily incidental to commercial banking.)

Exhibit VI. (a) Two copies of a list of all

branches, branch offices, agencies, or receiving stations showing with respect to each the location, date established, volume and nature of business transacted, and reference to the provisions of State law covering the establishment and operation of the branch.

(b) Two copies of any approval or authorization of the establishment of each branch or agency by State authorities required by State law.

Exhibit VII. Two copies of all agreements executed within the preceding five years, if any, with respect to waiver or restriction of deposits, subordination of deposits, or contributions involved in any rehabilitation or reorganization of the bank with a statement of the amounts involved at the time of each agreement and any subsequent modification of the agreements or repayments. If any agreements of the kinds described were executed prior to the preceding five years and as a result of which the bank is still obligated or subject to a claim of any kind, full information, in duplicate, regarding any such agreements should also accompany the application.

[Seal]

PEOPLES BANK

(Legal name of applying bank)

Lakewood Village,

Los Angeles County,

California

By E. B. MARTIN

President or Vice President

Attest:

W. M. PARKER

Secretary or Cashier

Note: If six per cent of the capital and surplus amounts to a sum not divisible by 100, the bank should apply for one additional share of stock for any excess or fractional part of \$100.

When determining the appropriate amount of the subscription for stock in the Federal Reserve bank, the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation should be included with the capital stock and surplus of the institution, but the amount of capital notes and debentures sold to others should not be included.

In the case of a bank which has set up a reserve for dividends payable in common stock, whether in connection with the retirement of preferred stock, capital notes, or debentures, or otherwise, such reserve shall be regarded as surplus for the purpose of determining the amount of Federal Reserve bank stock which the bank is required to hold, provided such reserve has been established pursuant to a resolution of the board of directors of the bank involved, will become a part of the permanent capital of the bank and will not be used for any other purpose than the issuance of dividends, payable in common stock.

Peoples Bank
Lakewood Village, California

STATEMENT OF CONDITION AS OF
NOVEMBER 28, 1941

ASSETS:

Due from Other Banks—Demand.....	\$125,000.00
Other Assets	None
<hr/>	
Total Assets	\$125,000.00

LIABILITIES:

Capital Stock	\$100,000.00
Surplus	25,000.00
Other Liabilities	None
<hr/>	
Total Liabilities	\$125,000.00

(Should be signed by at least three directors, and the cashier or treasurer. If the signing directors and officer have any reservation as to any of the clauses in the certificate, an explanation similarly signed should be attached to this sheet.)

CERTIFICATE OF DIRECTORS
AND CASHIER

We, the undersigned directors and officer of the Peoples Bank of Lakewood Village, Los Angeles County, California, certify, to the best of our knowledge and belief, that Exhibit I, attached hereto, contains a true and complete statement of

the condition of this bank on the date specified; that such statement includes all of the assets and liabilities of the bank; that the capital stock is unimpaired (this clause does not apply to mutual savings banks); and that the supplemental information submitted with and made a part of the application of this bank for membership in the Federal Reserve System is true to the best of our knowledge and belief.

E. B. MARTIN

E. B. Martin

WALTER EVERTS, JR.

Walter Everts, Jr.

O. D. ADY

O. D. Ady

W. M. PARKER

W. M. Parker,

Cashier

Note: Type name under each signature.

CERTIFICATE OF COUNSEL FOR FEDERAL RESERVE BANK

I, the undersigned, counsel for the Federal Reserve Bank of San Francisco, do hereby certify that, in my opinion, the Peoples Bank, Lakewood Village, Los Angeles County, California, is legally qualified, under its charter and the laws of the State of California, wherein it was incorporated, to purchase and hold stock in the Federal Reserve Bank of San Francisco, and to comply with the requirements of the Federal Reserve Act and the regulations of the

Board of Governors of the Federal Reserve System made in pursuance thereof, and that its attached application for membership in the Federal Reserve System is in due and proper form. Having made the necessary examination of such application and the accompanying papers which have a bearing on any legal matters involved and the State laws covering the organization and operation of this bank, I am satisfied as to the legal matters involved, except as otherwise noted.

ALBERT C. AGNEW

Counsel

Remarks: Cash capital paid in \$100,000. Population of Lakewood Village (unincorporated) estimated by Examiner L. B. Armstrong after visit to location 3500--4000 (X-Letter 4397). License to transact business withheld by Superintendent of Banks until membership in Federal Reserve System is perfected.

ALBERT C. AGNEW

Note: Inappropriate parts of the counsel's certificate should be marked out when it has been determined whether the bank is authorized to purchase stock in the Federal Reserve Bank or, in the case of a mutual savings bank or similar institution, to make the required deposit in lieu of a purchase of stock.

EXHIBIT M

Federal Reserve Bank of San Francisco

May 14, 1942.

Mr. E. B. Martin,
Vice President, Peoples Bank
Lake Village, California

Dear Mr. Martin:

Receipt is acknowledged of your letter of May 12, 1942, in which you enclose two certified copies of Resolution adopted May 12, 1942, by your Board of Directors accepting the conditions of membership in the Federal Reserve System as outlined in our letter of May 7 and the letter of the Board of Governors dated May 6, 1942.

Receipt is also acknowledged of two copies of Resolution adopted by your Board of Directors on November 28, 1941, authorizing application for membership in the Federal Reserve System and subscription to the capital stock of the Federal Reserve Bank of San Francisco and also authorizing the interchange of information regarding your bank between the Federal Reserve Bank of San Francisco and all state or federal supervisory authorities having jurisdiction with regard to your bank.

As outlined in our letter of May 7, 1942, it will be necessary for you to make payment for your subscription to the capital stock of the Federal Reserve Bank of San Francisco and open your reserve account with the Los Angeles Branch and to receive from the State Superintendent of Banks

authorization to commence business before membership in the Federal Reserve System will have been completed.

Yours very truly,

R. B. WEST

Vice President.

EXHIBIT N

Federal Reserve Bank of San Francisco

May 14, 1942.

Mr. E. B. Martin, Vice President

Peoples Bank

Lakewood Village, California

Dear Mr. Martin:

We acknowledge receipt of your letter of May 12, 1942, with enclosures as stated, and also confirm our telegram of today advising that the membership of Peoples Bank has been completed and becomes effective May 15, 1942.

Confirmation of your remittances to our Los Angeles Branch has been received, and there will be mailed to you a receipt for the payment on capital stock of the Federal Reserve Bank of San Francisco in a separate letter pertaining to routine matters and relations as a member bank, with which you will also be supplied with copies of regulations promulgated by the Board of Governors of the Federal Reserve System and circulars issued by the bank.

There is enclosed, for your information and guidance, a copy of Form F. R. 105a, "Instructions for the Preparation of Reports of Condition", also a copy of "Investment Securities Regulation", effective on and after July 1, 1938, issued by the Comptroller of the Currency, the provisions of which extend to State member banks.

As stated in the letter you received from the Board of Governors of the Federal Reserve System, a formal certificate of membership will be issued and mailed to you from Washington, D. C.

We trust that your membership may prove of mutual benefit, and that you will feel free to use the facilities made available thereunder.

Yours very truly,

R. B. WEST

Vice President.

Enclosures

EXHIBIT O

Federal Reserve Bank of San Francisco

May 15, 1942.

Peoples Bank

Lakewood Village, California

Dear Sirs:

We are charging your reserve account today, as separately advised, \$83.47 to cover the accrued dividend on your Federal Reserve bank stock for the period from the date of our last dividend, December 31, 1941, to May 15, 1942 (the date your

membership is effective), at one-half of 1% per month. When the next dividend is paid on this stock, it will cover the period from the date of our last dividend, December 31, 1941, to the date of such dividend.

As a member of the Federal Reserve System, your bank becomes subject to the terms of the Federal Reserve Act, and the ruling of the Board of Governors of the Federal Reserve System. That you may have available reference, we are forwarding you today under separate cover the following:

1. Binder containing a complete set of the current circulars issued by the Federal Reserve Bank of San Francisco. As these circulars are intended to acquaint member banks with the operations of the Federal Reserve Bank of San Francisco, it is suggested that you have those concerned review them carefully. Additional copies will be furnished upon receipt of your request.

2. Copy of the Federal Reserve Act, as amended.

3. Current set of regulations of the Board of Governors of the Federal Reserve System.

4. Two Hyalac Decalcomania window signs. These signs indicate membership of a bank in the Federal Reserve System and are copies of the official symbol indicating membership. They may be easily applied to window glass or other smooth, greaseless surface (wood, if filled).

Please acknowledge receipt of the circulars, regulations and copy of the Federal Reserve Act on the form enclosed therewith. We are also requesting

our Los Angeles Branch, with which you will be affiliated, to forward you the following:

1. Current edition of Federal Reserve Inter-district Collection Pamphlet and supplement to date.

2. Forms ST 11A for furnishing our Los Angeles Branch semimonthly condensed reports of your reserve condition. As a member bank you will be required to maintain on deposit with this bank, a reserve balance equal to 14% of your demand deposits and 6% of your time deposits, cash in your own vault and balance due from other banks not counting as reserve. The deposit liability is to be compiled in accordance with the formula given in Supplement 1 to Circular 130 and the report on Form ST 11A is to be mailed to our Los Angeles Branch on the 15th and last day of each month.

3. Index to symbols describing entries on statement and advice letter.

4. Two cards for signatures of your signing officers to be filed in duplicate with our Los Angeles Branch.

The names of your signing officers should be typed or plainly written on the left side of the face of the card and the signature affixed on the right side. The back of the card should be completed similarly for those tellers or others (not officers) who may have limited authority to sign on behalf of the bank. Please designate the capacity and extent of the signing authority of those other than officers authorized to sign. The num-

ber of those authorized to sign should be indicated in the space provided and the card should be dated and signed in the lower right corner by an officer.

5. Three copies of BD 2, Form of Resolution to be passed by your Board of Directors authorizing your officers to rediscount with or borrow from this bank on your own promissory note, and general pledge agreement. One executed copy of this resolution should be forwarded to our Los Angeles Branch and one to this office, the third copy may be retained for your file.

Any further information that you may desire relative to the Federal Reserve System or the operations of this bank as they relate to your bank, will be cheerfully furnished either by the Los Angeles Branch or by this office.

Please accept our best wishes for your success as a member of the Federal Reserve System.

Yours very truly,

R. T. HARDY

Assistant Cashier.

[Endorsed]: Filed May 31, 1944.

[Title of District Court and Cause]

MOTION TO DISMISS OF HENRY F. GRADY,
FEDERAL RESERVE AGENT

Comes now the defendant Henry F. Grady, Federal Reserve Agent, by his undersigned attorneys,

and respectfully moves this Honorable Court to dismiss this cause for the following reasons:

I.

FOR LACK OF JURISDICTION

(a) This Court lacks jurisdiction in this cause because necessary and indispensable parties defendant are not and cannot be joined as parties defendant in this cause, namely, the members of the Board of Governors of the Federal Reserve System in their official capacity as such.

(b) This Court has no jurisdiction herein over the defendant Board of Governors of the Federal Reserve System since it is an administrative agency of the United States Government, and may not be sued in absence [67] of Congressional consent, which is lacking; but if it may be sued, which is not admitted, it can only be sued in the District of Columbia where, by law, it has and maintains its official habitat.

(c) If plaintiff relies upon diversity of citizenship as a ground of jurisdiction in this cause, there is not a complete diversity of citizenship between plaintiff on the one hand and all the defendants on the other hand, in that plaintiff Peoples Bank is a corporation organized under and it is a citizen of the State of California and this defendant is also a citizen of the State of California, by reason of which this Court has no jurisdiction on the ground of diversity of citizenship.

Premises considered this defendant prays that this cause be dismissed for lack of jurisdiction.

II.

Subject to the above motion, this defendant moves this Court to dismiss this cause

FOR FAILURE TO STATE A CLAIM UPON
WHICH ANY RELIEF CAN BE GRANTED

(a) Plaintiff correctly alleges in its bill of complaint that the condition number 4, of which it complains and upon which this suit is predicated, was prescribed and required by the Board of Governors of the Federal Reserve System. Such bill of complaint affirmatively and correctly shows that such condition was not prescribed and required by this defendant, Henry F. Grady, Federal Reserve Agent.

While plaintiff's bill of complaint alleges that this defendant in his capacity as Federal Reserve Agent maintains, under regulations by the Board of Governors of the Federal Reserve System, a local office of said Board on the premises of the Federal Reserve Bank of San Francisco, and acts as an official representative of said Board for the performance of the functions conferred upon it by the Federal Reserve Act in the Twelfth Reserve District, such bill of complaint wholly fails to set out what functions, if any, are conferred upon this defendant by the Federal Reserve Act or otherwise in connection with the subject matter of this suit, namely, condition number 4 complained of by plaintiff, and wholly fails to set out what functions, if [68] any, this defendant, in such capacity is performing or attempting or threatening to per-

form in violation of any legal right of plaintiff.

This Court judicially knows that neither the Federal Reserve Act nor any rule or regulation promulgated by the Board thereunder anywhere confers any power or authority or places any duty, even ministerial, upon this or any Federal Reserve Agent in connection with or in any manner relating to the subject of admitting State banks to or excluding them from membership in the Federal Reserve System or prescribing conditions to such membership or in the matter of terminating or forfeiting such membership after such has been acquired; and if this defendant, as such Federal Reserve Agent, actually did intend to take proceedings predicated upon such condition number 4 to enforce same and to deprive plaintiff herein of its membership in the Federal Reserve System, as plaintiff has alleged, and which this defendant denies, he is and would be entirely powerless to accomplish such a result.

This defendant refers to and makes a part hereof, the same as if expressly written herein, his affidavit filed herein in support of this motion.

(b) The subject matter of this suit is whether the Board of Governors of the Federal Reserve System acted without lawful authority in admitting a certain State bank to membership in the Federal Reserve System upon the condition that if, during the existence of such a membership, a certain holding company affiliate and certain others, allied or affiliated with it, should acquire any stock in the applicant bank, without the prior consent of the

Board, such bank would withdraw its membership from the System within sixty days after notice from the Board so to do. Such condition, complained of, on its face shows that it is not self executing and the membership of the plaintiff State member bank in the Federal Reserve System is not automatically terminated upon the acquisition of stock by any of the corporations or others described. On the other hand, under the very terms of the condition pleaded and complained of, the most that could happen, but which plaintiff does not allege has happened, is that the Board, if it should determine to do so, could notify the plaintiff bank to withdraw from membership in such System. Should such notice at any time in the future be given by the Board, plaintiff bank, by the terms of the condition, has sixty days thereafter within [69] which to comply or refuse to comply. Should it, after sixty days, refuse to withdraw its membership in the System, the matter could end there with the bank continuing as a member bank; or, if not, and should the Board then consider the question of terminating the membership of such bank, it is required, under Section 327 of Title 12 U.S.C.A., to give such bank a hearing, which necessarily implies a hearing under due process of law, before it may or does determine to require such bank to surrender its stock in the Federal Reserve Bank and forfeit its rights and privileges of membership after all of this occurs, if it does, and not until then has the plaintiff exhausted the administrative remedy available to it

and which it is required to do before it may resort to any court for any relief.

Premises considered this defendant, Henry F. Grady, Federal Reserve Agent, respectfully moves this Honorable Court to dismiss this cause as to him in such capacity because plaintiff's bill of complaint fails to state a claim upon which any relief can be granted herein.

FRANK J. HENNESSY

United States Attorney, Southern Division of the
Northern District of California, Post Office
Building, San Francisco, California.

W. E. LICKING

Assistant United States Attorney, Post Office Building
San Francisco, California.

J. P. DREIBELBIS

Board of Governors of the Federal Reserve System,
Washington, D. C.

GEORGE B. VEST

Board of Governors of the Federal Reserve System,
Washington, D. C.

ROBERTSON, LEACHMAN,
PAYNE, GARDERE &
LANCASTER

NETH L. LEACHMAN

Of Counsel, 505 Republic Bank Building, Dallas,
Texas.

W. E. LICKING

Of Counsel

Attorneys for Defendant F. Gray, Federal Reserve
Agent. [70]

NOTICE OF MOTION

To: Peoples Bank, the plaintiff above named, Messrs. Sanner, Fleming & Irwin and John Amos Fleming, 5658 Wilshire Boulevard, Los Angeles, California, and Messrs. Willkie, Owen, Otis, Far & Gallagher, and Carl M. Owen, 15 Broad Street, New York City, its attorneys.

You, and each of you, will please take notice that the undersigned will bring the foregoing motion to dismiss plaintiff's complaint on for hearing before this Court in the Court Room of the Honorable Michael J. Roche, Judge of the above entitled Court, located in the Post Office Building, at 7th and Mission Streets, in the City and County of San Francisco, State of California, on the 19th day of June, 1944, at 10 o'clock a.m., of said day or as soon thereafter as counsel can be heard.

[Dated]: Dallas, Texas, May 26th, 1944.

NETH L. LEACHMAN

Attorney for Defendant Henry F. Grady, Federal Reserve Agent.

[Endorsed]: Filed May 31, 1944. [71]

[Title of District Court and Cause]

AFFIDAVIT OF HENRY F. GRADY, FEDERAL RESERVE AGENT, IN SUPPORT OF HIS MOTION TO DISMISS

District of Columbia—ss.

Before me, the undersigned authority, a Notary Public in and for the District of Columbia, on this day personally appeared Henry F. Grady, who after being by me duly sworn did under oath depose and say:

My name is Henry F. Grady. I have been for many years and am now an inhabitant and citizen of the City and County of San Francisco, State of California. I am Chairman of the Board of Directors of the Federal Reserve Bank of San Francisco, San Francisco, California, and also am Federal Reserve Agent. In my capacity as Federal Reserve Agent, I am joined as a defendant [72] in the above styled and numbered cause. My duties as Federal Reserve Agent are all prescribed by statute, and in such capacity I have no duties which are not so prescribed.

I am not now and never have been the agent of the Board of Governors of the Federal Reserve System for service of process in any court or other proceeding. I am not now and never have been authorized by law or otherwise to accept and never have accepted at any time service of process for and on behalf of the Board of Governors of the Federal Reserve System.

As Federal Agent, I have not had anything whatsoever to do with and do not have any power, authority or duty in connection with the admission or refusal of state banks to membership in the Federal Reserve System or with the termination or forfeiture of such membership after admission. As Federal Reserve Agent, I have had nothing whatsoever to do with the admission of Peoples Bank of Lakewood Village, California, to membership in said System. As Federal Reserve Agent, I had nothing whatsoever to do with the prescribing of the conditions of membership in said System required of or agreed to by said Peoples Bank. As Federal Reserve Agent, I could not and do not intend to have anything to do with the question as to whether or not any of the conditions of membership have or have not been violated. As Federal Reserve Agent, I have taken no position and do not intend to take one with reference to whether or not Peoples Bank of Lakewood Village, California, shall or shall not continue to be a member of the Federal Reserve System. The condition of membership, of which plaintiff herein complains, was prescribed solely by the Board of Governors of the Federal Reserve System. The Board did not seek or have my advice or recommendation thereon. As Federal Reserve Agent, or otherwise, I have not had and do not now have any authority to make, alter or revoke the condition complained of by plaintiff, or any authority to exercise any discretion, or even ministerial function, in the enforcement of it. The Board of Governors of the Federal

Reserve System under sections 321 and 322 of Title 12 of the United States Code, has the sole and exclusive authority to admit or exclude state banks from membership in the Federal Reserve System; and such Board, and not a Federal Reserve Bank or a Federal Reserve Agent, has the exclusive power and authority to prescribe conditions, rules and regulations pertaining thereto, and after a hearing such Board, and it alone, has the power to require [73] such state member bank to surrender its stock in the Federal Reserve Bank and to forfeit all rights and privileges of membership in such Federal Reserve System.

I, as Federal Reserve Agent, have never intended to have or take any part in any proceedings, if any there be, predicated upon condition number 4, complained of by plaintiff herein, for the purpose of depriving plaintiff of its ownership of shares of the Federal Reserve Bank of San Francisco and of membership in the Federal Reserve System. Should the Board seek to enforce said condition (and this is a matter concerning which I have no knowledge whatsoever) I, as Federal Reserve Agent, would have nothing whatsoever to do with such enforcement or any part thereof.

Witness my hand this the 13th day of May, 1944.

HENRY F. GRADY

Subscribed and sworn to before me this the 13th day of May, 1944.

[Seal]

O. E. FOULK

Notary Public in and for
the District of Columbia

Commission Expires May 14, 1945.

[Endorsed]: Filed May 31, 1944. [74]

[Title of District Court and Cause]

PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AGAINST THE DEFEN-
DANT FEDERAL RESERVE BANK OF
SAN FRANCISCO

Comes now the plaintiff, Peoples Bank, by its undersigned attorneys and respectfully moves this Honorable Court for summary judgment against the defendant, The Federal Reserve Bank of San Francisco, on the ground that the pleadings, motions, admissions and affidavits on file in this action show that there is no genuine issue as to any material fact, and that said defendant, The Federal Reserve Bank of San Francisco, has no defense sufficient in law.

[Dated]: July 28, 1944.

SANNER, FLEMING & IRWIN
WILKIE, OWEN, OTIS,
FARR & GALLAGHER

By JOHN AMOS FLEMING

Attorneys for Plaintiff [75]

NOTICE OF MOTION

To: The Federal Reserve Bank of San Francisco
and to Albert C. Agnew, its attorney, Federal
Reserve Bank Building, San Francisco, Cali-
fornia:

You and each of you will please take notice that the undersigned will bring the foregoing motion for summary judgment against the defendant, The Federal Reserve Bank of San Francisco on for hearing before this Court, in the court room of the Honorable Michael J. Roche, Judge of the above entitled Court, located in the Post Office Building, at Seventh and Mission Streets, in the City and County of San Francisco, State of California, on the 21st day of August, 1944, at the hour of 10:00 A.M. of said day, or as soon thereafter as counsel can be heard.

Dated: At Los Angeles, California, July 28, 1944.

SANNER, FLEMING & IRWIN
WILLKIE, OWEN, OTIS,
FARR & GALLAGHER

By JOHN AMOS FLEMING
Attorneys for Plaintiff

[Endorsed]: Filed July 31, 1944.

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT OF DE-
FENDANT FEDERAL RESERVE BANK
OF SAN FRANCISCO AND IN SUPPORT
OF PLAINTIFF'S MOTION FOR SUM-
MARY JUDGMENT.

AFFIDAVIT OF W. M. PARKER

State of California

County of Los Angeles—ss.

W. M. Parker, being first duly sworn, deposes
and says:

That he is now and at all times since November
28, 1941, been Secretary and Cashier of the Peoples
Bank of Lakewood Village, California, the plain-
tiff herein.

That he has read the affidavit on file herein of
William A. Day, President of the Federal Reserve
Bank of San Francisco, one of the defendants
herein, and knows the contents thereof. That he
has examined the files of the Peoples Bank con-
taining all the correspondence, documents, papers
and other records having to do with the admission
of the Peoples Bank to membership in the Fed-
eral Reserve System in May, 1942. That in addi-
tion to the correspondence and other papers con-
tained in the affidavit of William A. Day, the files
and records of the Peoples Bank show the follow-
ing relevant and important papers: [78]

1. A copy of the typical statement in letter form

made by all the stockholders of the Peoples Bank to the Federal Reserve Bank pursuant to the requirement of paragraph 4 of the letter of the Federal Reserve Bank to the Peoples Bank of March 11th, 1942, (Exhibit F to the Day affidavit) is annexed hereto marked Exhibit 1. These letters bear date of March 23, 1942.

2. That a copy of the statement filed by the Directors of Peoples Bank pursuant to the directions of said letter of April 23, 1942 is hereto annexed marked Exhibit 2.

3. No proposed resolutions were enclosed or included in the letter of May 6th, 1942 from the Board of Governors to the Peoples Bank (Exhibit H of the Day affidavit). A true copy of the proposed resolutions which were included in the letter of the Federal Reserve Bank of San Francisco to the Peoples Bank, dated May 7th, 1942 (Exhibit I of the Day Affidavit) is annexed hereto marked Exhibit 3.

4. These resolutions in identically the same form so proposed were adopted by the Board of Directors of the Peoples Bank on May 12, 1942 and two certified copies thereof were mailed to the Federal Reserve Bank of San Francisco with a letter dated May 12, 1942, a copy of which is marked Exhibit K and attached to the affidavit of William A. Day on file herein.

I am informed and believe from copies thereof which have been furnished to me and which I have read that the following exchange of telegrams and correspondence has taken place:

On June 13th, 1944, Messrs. Willkie, Owen, Otis, Farr & Gallagher, attorneys for the Peoples Bank in this litigation, sent a letter to Mr. Albert C. Agnew of which a true copy is hereto annexed marked Exhibit 4. Thereafter under date of June 15th, 1944 the said Mr. Agnew, General Counsel of the Federal Reserve Bank of San Francisco, wrote a letter to Willkie, Owen, Otis, Farr & Gallagher in response to their letter of June 13th, [79] a true copy of which is hereto annexed marked Exhibit 5.

On July 7th, 1944 the said Messrs. Willkie, Owen, Otis, Farr & Gallagher addressed a telegram to said Mr. Albert C. Agnew, a true copy of which is hereto annexed marked Exhibit 6. In reply thereto Mr. Albert C. Agnew sent a telegram to Messrs. Willkie, Owen, Otis, Farr & Gallagher under date of July 7th, 1944, a true copy of which is hereto annexed marked Exhibit 7. On July 10th, 1944 Messrs. Willkie, Owen, Otis, Farr & Gallagher sent a telegram to Mr. Agnew, a true copy of which is hereto annexed marked Exhibit 8. On July 11th, 1944 Mr. Agnew replied to the said telegram of July 10, 1944, by telegram, a true copy of which is hereto annexed and marked Exhibit 9.

On July 11th, 1944 J. P. Dreibelbis, general attorney for the Board of Governors of the Federal Reserve System sent a telegram to Messrs. Willkie, Owen, Otis, Farr & Gallagher, a true copy of which telegram is hereto annexed marked Exhibit 10.

Further affiant saith not.

W. M. PARKER

Subscribed and sworn to before me this 19th day of July, 1944.

[Seal] JOHN A. FLEMING
Notary Public in and for the County of Los Angeles, State of California. [80]

EXHIBIT No. 1

March 23, 1942.

Federal Reserve Bank of
San Francisco,
San Francisco, California

Gentlemen:

I, the undersigned, being a stockholder of the Peoples Bank, Lakewood Village, California, do hereby state that I have no arrangements, expressed or implied, with respect to the sale or transfer of the stock of the Bank which I own to either the Transamerica Corporation, or any organization affiliated or closely identified with Transamerica Corporation, or any other Bank Holding Company group, and that I do not intend to enter into any such agreements or understandings.

Yours very truly,

.....

EXHIBIT No. 2

Peoples Bank
Lakewood Village, California

April 23, 1942

Federal Reserve Bank
San Francisco
California

Gentlemen:

We, the undersigned members of the Board of Directors of Peoples Bank, located at Lakewood Village, Los Angeles County, California, do hereby state as follows:

1. That the above mentioned bank is now organized as a bona fide local, independent institution, and is expected to be continued as such.

2. In view of the fact that the stockholders of the Peoples Bank have been asked to state in writing that they have no agreements or understandings, express or implied, with respect to the sale or transfer of the stock of the Peoples Bank to the Transamerica Corporation or any organization affiliated or closely identified with Transamerica Corporation or any other Bank Holding Company group, we assume that upon securing such signatures you will be satisfied that the matters set forth in your letter of March 11th, 1942, have been complied with.

3. That the furniture equipping our banking quarters was purchased direct from Barker Bros., Los Angeles, California, and that we are not now and never have been obligated to Capital Company

or any other part of the Transamerica group for the purchase of said furniture.

4. That the above-mentioned bank is not now, and never has been obligated in any way, except by direct purchase agreement, to Capital Company or any other part of the Transamerica group for the installation of mechanical equipment, fixtures and safes in its banking quarters, and that said purchase agreement will be paid in full, as soon as permission to operate has been given by the State Superintendent of Banks.

In Witness Whereof, we have affixed our hands and seals this 23rd day of April, 1942.

/s/ E. B. MARTIN

/s/ W. R. MARTIN

/s/ WALTER EVERTS, JR.

/s/ O. H. ADY

/s/ W. W. WERNER

/s/ RALPH H. CLOCK

/s/ CLARK J. BONNER

/s/ HAROLD R. PAULEY

/s/ CHAS. B. HOPPER

/s/ R. C. LEWIS

I, W. M. Parker, do hereby certify that I am the duly elected Secretary of Peoples Bank, located at Lakewood Village, Los Angeles County, California, and that the signers of the foregoing statements comprise the full membership of the Board of Directors of the above mentioned bank.

In Witness Whereof, I have attached my hand

and the seal of this Corporation this 23rd day of April, 1942.

[Seal]

/s/ W. M. PARKER
Secretary

EXHIBIT No. 3

RESOLUTION ADOPTED BY BOARD OF
DIRECTORS OF PEOPLES BANK, LAKE-
WOOD VILLAGE, CALIFORNIA

“Whereas, this bank, acting under resolution adopted by its Board of Directors, on November 28th, 1942, applied for stock in the Federal Reserve Bank of San Francisco, which application was on May 6, 1942, approved by the Board of Governors of the Federal Reserve System; and

“Whereas, such approval was expressly predicated upon acceptance and compliance by this bank with the following conditions, to-wit:

“1. Such bank at all times shall conduct its business and exercise its powers with due regard to the safety of its depositors, and, except with the permission of the Board of Governors of the Federal Reserve System, such bank shall not cause or permit any change to be made in the general character of its business or in the scope of the corporate powers exercised by it at the time of admission to membership.

“2. The net capital and surplus funds of such bank shall be adequate in relation to the character

and condition of its assets and to its deposit liabilities and other corporate responsibilities, and its capital shall not be reduced except with the permission of the Board of Governors of the Federal Reserve System.

“3. Such bank shall not engage as a business in issuing or selling either directly or indirectly (through affiliated corporations or otherwise) notes, bonds, mortgages, certificates, or other evidences of indebtedness representing real estate loans or participations therein, either with or without a guarantee, indorsement or other obligation of such bank or an affiliated corporation.

“4. If, without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation or any unit of the Transamerica Group, including Bank of America National Trust and Savings Association, or any holding company affiliate or any subsidiary thereof, acquires, directly or indirectly through the mechanism of extension of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of usual correspondent bank relationships, such bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System; and

“Whereas, the officers of this bank, under authority duly conferred upon them by this board, have accepted said conditions and in behalf of this

bank agreed to comply with the same and all thereof;

“Resolved, That this bank does hereby accept such stock in the Federal Reserve Bank of San Francisco and membership in the Federal Reserve System, subject to all of the foregoing terms and conditions of membership, and does hereby agree to comply and to continue compliance with the same and all thereof;

“Further Resolved, That the officers and employees of this bank are hereby strictly enjoined to observe and comply with all the aforesaid terms and conditions and to continue compliance therewith.”

(Minutes of May 12, 1942)

EXHIBIT No. 4

Willkie, Owen, Otis, Farr & Gallagher

15 Broad Street, New York

June 13th, 1944

Re: Peoples Bank v. Federal Reserve Bank of San Francisco, No. 23243R, In the District Court of the United States, Northern District of California, Southern Division.

Albert C. Agnew, Esq.

Counsel for the Defendant Federal Reserve Bank
in the above entitled case,

C/o Federal Reserve Bank of San Francisco.

Dear Sir:

In support of the motion made by the defendant

Federal Reserve Bank of San Francisco in the above entitled case, for a summary judgment, the affidavit of William A. Day, filed May 29, 1944, states, among other things (p. 9, line 30 et seq.):

“Affiant further avers that, in addition to lack of power, authority, jurisdiction and discretion regarding the taking of any proceedings, statutory, administrative, or otherwise, as to the enforcement of said condition No. 4, as hereinabove averred, defendant Reserve Bank, at none of the times hereinabove or in said complaint mentioned, has had, or now has, any such intentions,”

to wit,—as we understand it,—intention with respect to the taking of any proceedings, statutory, administrative, or otherwise, for the enforcement of such conditions.

In the Memorandum of Points and Authorities which you have served on us in support of said motion for a summary judgment, you state (p. 2 of your Memorandum):

“It (the Federal Reserve Bank of San Francisco) has never contended or asserted, nor does it now contend or assert that said condition is valid or enforceable against the plaintiff or that it is empowered to cancel plaintiff’s shares of stock in defendant Federal Reserve Bank of San Francisco, or to terminate plaintiff’s membership in the Federal Reserve System. It is without authority in law or other-

wise to take any proceedings whatever in that respect, and it does not intend to do so.”

For the purpose of clarifying the issues which will necessarily be presented to the Court in the hearing upon the motion, we respectfully ask the answer of the defendant Federal Reserve Bank to the following question, to wit:

assume that the Board of Governors of the federal Reserve System should give to the plaintiff, the Peoples Bank, the sixty-day notice which is provided for in said condition No. 4;

assume that, following the receipt of said notice, the Peoples Bank should refuse or neglect to take any action to withdraw from membership in the Federal Reserve System;

assume that the Board of Governors of the Federal Reserve System (predicating their action on said condition No. 4, and the failure or refusal of the plaintiff Peoples Bank to withdraw from membership in the Federal Reserve System following receipt by the Peoples Bank of the sixty-day notice provided for in condition No. 4 and purporting to act either under the authority of Section 327 of Chapter 3 of Title 12, U.S.C.A., or under any other claimed authority) should, after hearing or otherwise, issue an order or direction requiring the plaintiff, the Peoples Bank, to surrender its stock in the defendant Federal Reserve Bank of San Francisco and to forfeit all its

rights and privileges of membership in the Federal Reserve System, and that the Peoples Bank should refuse to comply with such order or direction by surrendering its stock or otherwise——

under these circumstances, does or does not the Federal Reserve Bank of San Francisco contend or claim that it is empowered to take any steps of any kind whatsoever, either with or without the direction or request of the Board of Governors of the Federal Reserve System, so to do, to terminate the ownership by the plaintiff Peoples Bank of its stock in the Federal Reserve Bank of San Francisco, together with the incidental benefits of membership in the Federal Reserve System.

We await a prompt response to this letter, which will be much appreciated.

Very truly yours,

(Signed) WILLKIE, OWEN, OTIS,
FARR & GALLAGHER

CMO:KM

EXHIBIT No. 5

Federal Reserve Bank of San Francisco
San Francisco 20, California

June 15, 1944.

Willkie, Owen, Otis, Farr and Gallagher
15 Broad Street,
New York, New York

Dear Sirs:

Re: Peoples Bank v. Federal Reserve
Bank of San Francisco, No. 23243R,
In the District Court of the United
States, Northern District of California,
Southern Division

Referring to your letter of June 13, 1944, based upon the entirely hypothetical state of facts recited therein, our answer is as follows:

The Federal Reserve Bank of San Francisco does not contend or claim but states the fact to be, predicated upon the law and the practice required thereunder, that it is not empowered to take any steps of any kind whatsoever, either with or without the direction or request of the Board of Governors of the Federal Reserve System so to do, to terminate the ownership by the plaintiff Peoples Bank of its stock in the Federal Reserve Bank of San Francisco or the benefits incidental to membership in the Federal Reserve System.

Upon notice from the Board of Governors of the Federal Reserve System that, after proper proceedings, the membership of a bank affiliated with

it has been terminated, the sole duty and function of the Federal Reserve bank so notified is to return to the member bank all property and funds of such member bank in the possession of the Federal Reserve bank to which the member bank is entitled, and this only at the explicit direction of the Board of Governors of the Federal Reserve System.

Yours very truly,

(Signed) ALBERT C. AGNEW

Albert C. Agnew

General Counsel

EXHIBIT No. 6

Western Union

July 7th, 1944

Albert C. Agnew, Esq.

Counsel for Federal Reserve Bank of San Francisco
San Francisco, California

For use on your Motion for Summary judgment in Peoples Bank case, will you kindly let us know the number of State banks in California that are members of the Federal Reserve System and whether any condition similar to condition No. 4 was imposed in connection with their joining the system. Also kindly ascertain and let us know whether such condition or any condition at all similar thereto was imposed upon any other State bank anywhere in the United States. If any such con-

dition was imposed upon any bank anywhere kindly give us the particulars.

WILLKIE, OWEN, OTIS,
FARR & GALLAGHER

EXHIBIT No. 7

Western Union

Fu283 54 — WUX San Francisco, Calif. 7 1158

1944 Jul 7 pm 3 08

Willkie Owen Otis Farr & Gallagher
15 Broad St NYK

There are nineteen State banks in California which are members of Federal Reserve System. Since remaining inquiries contained in your wire of this date are matters subject to sole jurisdiction of an peculiarly within knowledge of Board of Governors of Federal Reserve System your wire is being relayed to that Board for further attention—

ALBERT C. AGNEW

EXHIBIT No. 8

Western Union

July 10, 1944

Mr. Albert C. Agnew
Federal Reserve Bank Building
San Francisco, California

Retel not having heard from Federal Reserve

Board would appreciate if you would kindly inform us what the records of the Federal Reserve Bank of San Francisco show respecting the imposition of any condition similar to Number Four on the other eighteen State member banks

WILLKIE, OWEN, OTIS,
FARR & GALLAGHER
15 Broad St.
New York, New York

EXHIBIT No. 9

Western Union

1944 Jul 10 pm 7 24

FA475 30 — San Francisco Calif 10 401P

Willkie Owen Otis Farr & Gallagher
15 Broad St. NYK—

Retel date we are informed Board of Governors has advised you that information requested is confidential in character. We regret therefore that we are not at liberty to supply it—

ALBERT C. AGNEW

EXHIBIT No. 10

Western Union

AM55

1D110 52 2 Extra — 1D Washington DC 10 455P

Willkie Owen Otis Farr - and Gallagher—
15 Broad St NYK

Retel Agnew Federal Reserve Bank of San Fran-

cisco. Conditions of membership which the Board has considered necessary or advisable in particular cases are confidential and since information requested does not appear to be material to the issues involved in the motions before the court I regret I cannot furnish same—

J P DREIBELBIS

General Attorney Board of
Governors of the Federal
Reserve System

[Endorsed]: Filed July 31, 1944.

[Title of District Court and Cause.]

SUPPLEMENTAL AFFIDAVIT OF WIL-
LIAM A. DAY IN SUPPORT OF MOTION
OF DEFENDANT FEDERAL RESERVE
BANK OF SAN FRANCISCO FOR SUM-
MARY JUDGMENT.

State of California,
City and County of San Francisco—ss.

William A. Day, being first duly sworn, testifies of his own knowledge as follows:

Affiant refers to his previous affidavit on file herein and hereby supplements the same in the following respects:

The previous affidavit refers to but does not have attached thereto, as exhibits, the following:

(1) Letter of advice dated February 20, 1942, addressed to plaintiff in which plaintiff was advised

that defendant Reserve Bank had been requested to inform plaintiff [95] that the Board of Governors was unwilling to approve plaintiff's application on the basis of the information then before the Board; a full, true and correct copy of said letter is attached hereto, marked Exhibit 1, and by such reference incorporated herein the same as if said letter were herein set out at length.

(2) Telegram dated May 6, 1942, addressed to affiant sent by defendant Board, signed by Bethea, Assistant Secretary of said defendant Board, in which affiant was advised, by code telegram, that the application of plaintiff for membership in the Federal Reserve System had been approved by said defendant Board subject to conditions; that a full, true and correct translation of said code telegram is attached hereto, marked Exhibit 2, and by such reference incorporated herein the same as if said telegram were herein set out at length.

(3) A full, true and correct copy of resolution of the board of directors of plaintiff bank accepting the conditions of membership imposed by defendant Board and agreeing to comply therewith, furnished the defendant Reserve Bank pursuant to defendant Board's letter dated May 6, 1942, which was intended to be attached as Exhibit J to affiant's previous affidavit, is attached hereto, marked Exhibit 3, and by such reference incorporated herein the same as if such resolution were herein set out at length.

Affiant avers that the form of such resolution is the form approved by defendant Board in every

case of acceptance of conditions of membership, by a state bank within the Twelfth Federal Reserve District desiring to become a member of the Federal Reserve System, since on or about December 8, 1933, and that such form, containing the agreement to comply with the conditions imposed, was the form acceptable to [96] defendant Board in admitting plaintiff to membership in the Federal Reserve System.

Affiant further avers that said resolution, and the whole and every part thereof, including the agreement to comply therewith therein contained, was not, nor is it now, a requirement of defendant Reserve Bank, imposed upon, or exacted of, plaintiff by this defendant as a condition to the issuance to plaintiff of capital stock in Reserve Bank, or as a condition attached to such stock when, as, and if, the same were issued, or as a condition attached to plaintiff's original subscription therefor which was subsequently canceled, as hereinafter averred, or as a condition attached to plaintiff's further subscription for such capital stock, which has not been fully paid for, as hereinafter averred, or otherwise.

Affiant states that said resolution was enclosed which defendant Reserve Bank's letter dated May 7, 1942, without any requirement whatever on the part of defendant Reserve Bank as to its adoption in exact terms, or otherwise; that, as stated by Reserve Bank in its said letter dated May 7, 1942, such resolution was simply a "suggested form" (Exhibit I, previous affidavit) which plaintiff might use if it were so advised.

Said resolution was prepared by defendant Reserve Bank and enclosed with its letter dated May 7, 1942, which letter was sent under instructions of defendant Reserve Board, in accordance with Reserve Bank's usual practice in like cases, with the intention of being helpful, and in order to expedite plaintiff's membership in the Federal Reserve System in view of the fact that Board's letter dated May 6, 1942, addressed to plaintiff, sent from Washington, D. C., to defendant Reserve Bank for transmittal to plaintiff, would not actually be received by plaintiff, in the ordinary course of mail, until several days after May 6, 1942. However, such suggested form [97] of resolution was adopted by plaintiff in the exact form as prepared by defendant Reserve Bank and was returned to Reserve Bank, without any protest or complaint whatever on the part of plaintiff, by letter dated May 12, 1942 (Exhibit K, previous affidavit), in which plaintiff thanked defendant Reserve Bank "for your splendid cooperation."

Affiant further avers that plaintiff is the owner and holder of 68 shares of the capital stock of defendant Reserve Bank, subject to the payment of one-half of the purchase price thereof, or the sum of \$3,400, when call is made therefor by defendant Board of Governors of the Federal Reserve System; that originally, and on or about the 15th day of May, 1942, plaintiff, as required by the provisions of section 9 of the Federal Reserve Act, as amended, and the regulations applicable thereto, subscribed for 75 shares of the capital stock of de-

defendant Reserve Bank, and plaintiff thereupon became the owner of such shares of capital stock, subject to the payment of one-half of the purchase price thereof, or the sum of \$3,750, on call of said defendant Board of Governors; that subsequently, and on or about the 16th day of March, 1943, such subscription was canceled to the extent of 7 shares of such capital stock on the application of plaintiff therefor, by reason of the fact that plaintiff's call report as of December 31, 1942, showed that the combined capital and surplus of plaintiff bank on that date was the sum of \$112,500 and that, under the law and regulations applicable thereto, plaintiff was only entitled to hold said 68 shares of the capital stock of defendant Reserve Bank, subject to call as aforesaid, instead of said 75 shares previously subscribed for; that ever since said 16th day of March, 1943, plaintiff has been, and now is, a stockholder of the defendant Reserve Bank, owning and holding said 68 shares of such capital stock, subject to call as aforesaid; that by reason of the foregoing affiant states that it is untrue, as alleged in plaintiff's complaint and as testified to by affiant in his previous affidavit, that 34 shares of the capital stock of defendant Reserve Bank were paid for by and/or were issued to plaintiff and/or that plaintiff is now the owner of said shares.

Affiant also avers that the examination or investigation of plaintiff bank, made by defendant Reserve Bank in connection with plaintiff's application for membership in the Federal Reserve System, was made by defendant Reserve Bank as the examining

agent of defendant Board at its direction, under its instructions, and pursuant to the provisions of sections 9 and 21 of the Federal Reserve Act, as amended (12 U. S. C. 325, 481). That the report of said examination was forwarded by defendant Reserve Bank to defendant Board, without any recommendation as to the granting of said application or otherwise, for the information of defendant Board in passing upon plaintiff's application for admission as a member of the Federal Reserve System.

Dated: San Francisco, California, October 4, 1944.

WILLIAM A. DAY

Subscribed and sworn to before me this 4th day of October, 1944.

[Seal] KATHRYN E. STONE

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires March 15, 1945 [99]

EXHIBIT No. 1

February 20, 1942

Peoples Bank,
Lakewood Village,
Los Angeles County,
California.

Dear Sirs:

Reference is made to your application for membership in the Federal Reserve System.

The Board of Governors of the Federal Reserve System has advised us that careful consideration has been given to the application, and we have been requested to inform you that the Board of Governors is unwilling to approve the application on the basis of the information now before it.

Yours very truly,

R. B. WEST

Vice President.

EXHIBIT No. 2

Federal Reserve Bank of San Francisco

Incoming Telegram

From: Board, Washington

To Mr. Day May 6, 1942 Federal Reserve Bank
of San Francisco

Wire No. 96. Time Filed: 611p. Time Received:
328p.

Application of Peoples Bank, Lakewood Village, California, for membership in the System has been approved by Board subject to conditions of membership numbered 1, 2 and 3 set forth in Board's Regulation H and the following special condition:

“4. If, without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation or any unit of the Transamerica group, including Bank of America National Trust and Savings Association, or any holding company affiliate or any subsidiary thereof, acquires, directly or indi-

rectly, through the mechanism of extension of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of usual correspondent bank relationship, such bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System."

Please advise such bank of Board's approval and conditions of membership prescribed, together with necessary instructions as to procedure for accomplishing membership. In addition to the usual comments the letter to the bank Will include the following:

"The application for membership has been approved upon representations that the bank is a bona fide local independent institution and that no holding company group has any interest in the bank at the time of its admission to membership, and that the directors and stockholders of the bank have no plans, commitments or understandings looking toward a change in the status of the bank as a local independent institution. Condition of membership numbered 4 is designed to maintain that status."

Letter containing detailed advice regarding such approval will be forwarded bank through you as soon as possible. Upon receipt of certified copy of resolution of board of directors of such bank

accepting conditions of membership prescribed by Board and advice of compliance with said special condition required to be complied with prior to admission to membership, together with the advice of Counsel for the Federal Reserve Bank that such conditions have been properly accepted, the Federal Reserve Bank is authorized to take such action as may be necessary to complete admission of applying bank to membership. Please wire Board through use of code word FAZKE the same day membership of bank becomes effective and forward copy of resolution accepting conditions of membership together with copy of advice of compliance with said special condition to be complied with prior to admission and copy of opinion of Counsel for the Federal Reserve Bank that all conditions prescribed have been properly accepted by bank.

BETHEA

EXHIBIT No. 3

RESOLUTION ADOPTED BY BOARD OF
PEOPLES BANK, LAKEWOOD VILLAGE,
CALIFORNIA

“Whereas, this bank, acting under resolution adopted by its Board of Directors, on November 28, 1941, applied for stock in the Federal Reserve Bank of San Francisco, which application was on May 6, 1942 approved by the Board of Governors of the Federal Reserve System; and

“Whereas, such approval was expressly predicated upon acceptance and compliance by this bank with the following conditions, to-wit:

“1. Such bank at all times shall conduct its business and exercise its powers with due regard to the safety of its depositors, and, except with the permission of the Board of Governors of the Federal Reserve System, such bank shall not cause or permit any change to be made in the general character of its business or in the scope of the corporate powers exercised by it at the time of admission to membership.

“2. The net capital and surplus funds of such bank shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, and its capital shall not be reduced except with the permission of the Board of Governors of the Federal Reserve System.

“3. Such bank shall not engage as a business in issuing or selling either directly or indirectly (through affiliated corporations or otherwise) notes, bonds, mortgages, certificates, or other evidences of indebtedness representing real estate loans or participations therein, either with or without a guarantee, indorsement, or other obligation of such bank or an affiliated corporation. [104]

“4. If, without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation or any unit of the Transamerica group, including Bank of America National Trust and Savings Association, or any

holding company affiliate or any subsidiary thereof, acquires, directly or indirectly, through the mechanism of extension of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of usual correspondent bank relationships, such bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System; and

“Whereas, the officers of this bank, under authority duly conferred upon them by this board, have accepted said conditions and in behalf of this bank have agreed to comply with the same and all thereof;

“Resolved, That this bank does hereby accept such stock in the Federal Reserve Bank of San Francisco and membership in the Federal Reserve System, subject to all of the foregoing terms and conditions of membership, and does hereby agree to comply and to continue compliance with the same and all thereof;

“Further Resolved, That the officers and employees of this bank are hereby strictly enjoined to observe and comply with all the aforesaid terms and conditions and to continue compliance therewith.”

CERTIFICATE

At a meeting of the board of directors of Peoples Bank, Lakewood Village, Los Angeles County, California, duly called and [105] held on the 12th day of May, 1942, the foregoing resolution was

duly offered, seconded and adopted. I hereby certify that the foregoing is a full, true and correct copy of such resolution passed by the board of directors of this corporation on the date specified and that the same has not been repealed, amended, or modified.

Dated this 12th day of May, 1942.

[Seal] W. M. PARKER

Secretary or Cashier Peoples Bank, Lakewood Village, California

[Endorsed]: Filed Oct. 4, 1944. [106]

CERTAIN PARTS OF THE REPORTER'S
TRANSCRIPT FOR OCTOBER 9, 1944
AND OCTOBER 10, 1944 [107]

Mr. Owen: Your Honor, I thought I would be through with practically everything within an hour, in answer to all these motions; at least, I hope so. However, I may take more than that, but I hope I will not do so, your Honor.

The Court: The reason I was inquiring about time, I did not know but possibly you wished to get away, and I wanted to be helpful.

Mr. Owen: Thank you very much. I have ample time now, as I said this morning. I wouldn't want to stint the gentlemen on any time they desire.

The Court: Very well.

Mr. Agnew: Your Honor, I would imagine that

the motions to dismiss filed by the Board of Governors of the Federal Reserve System and the Federal Reserve Agent, and the Federal Reserve Bank of San Francisco could be argued somewhat as a unit. I should judge an hour to an hour and a half in time on those would be sufficient.

Mr. Owen: Mr. Agnew, would you think it orderly for you to argue your motion for summary judgment also as part of the full case, and then I could meet everything?

Mr. Agnew: Yes, I shall be glad to do that. [108]

I respectfully submit to your Honor that while it may be technically argued and it is technically true that a court of equity is not precluded from taking jurisdiction on the ground that a remedy sought is premature where it rests on something being done outside the orbit of the plaintiff, that is the remedy here is not one which may be initiated at this date by the plaintiff, but I respectfully suggest that 60 days will pass before any real danger could happen to the plaintiff, [109] and particularly in view of the plaintiff's position that this condition is void and outside of the Board's power, particularly in view of that condition, and within a 60-day period the plaintiff would be exercising the rights it had under the terms of the conditions, and I respectfully suggest that the action, if not technically premature, is at least in principle premature, and that the plaintiff in such a case as this should not be permitted to invoke the jurisdiction of this court before a wrong has been done, and before even if the alleged contemplated action were

taken there would be a 60-day period within which the plaintiff was entitled to a hearing before the Board. [110]

In order to demonstrate to your Honor, if I may, how far away from any damage to this plaintiff the present situation is, I want to quote the following from page 74 of their brief, which was put in their brief in an effort to show that under certain conditions the Federal Reserve Bank might do something to them regarding this condition of membership, the exercise of some function relative to the expulsion of this bank from membership and, therefore, that it might possibly be construed by the Court as a proper party. This is what they say:

“Assume that, under Condition No. 4, the Board gave the Peoples Bank notice . . . that the Board invoked the condition and called upon the Peoples Bank to withdraw from membership in the system.”

That is assumption No. 1.

“Assume that the Peoples Bank in that situation refused to withdraw. It is clear, we submit, that at that stage of events, neither the Board nor the Reserve Bank would have power, without further proceedings, to require the defendant Reserve Bank to purport to cancel the stock.”

That is undoubtedly so, because the law gives this plaintiff—in other words, if the Board of Governors sought to cancel this bank’s membership it could only do it after the holding of an admin-

istrative hearing, and that is a long way down the line. That means it would have to conform to due process and the like. [111]

“Therefore, we assume that the Board would have to go further and would seek to proceed within the scope of section 327. . . . It is here that, in the last analysis, the defendant Reserve Bank comes in with a substantial amount of action required to be taken by it in the cancellation of the plaintiff’s stock . . . and in denying to plaintiff the privileges of membership.”

In other words, they say that assume that under Condition No. 4 the Board gives the notice, assume that under Condition No. 4 the Bank refused to comply with its own condition of membership, and withdraw; assume that after that happened the Board gives notice of an administrative hearing; assume that an administrative meeting is held and the Board comes to the conclusion the membership of this bank in the Federal Reserve System should be cancelled, then the Federal Reserve Bank of San Francisco would have something to do with it. What would they have to do? Plaintiff says we would have something to do with cancelling their stock. If that is true, it would be a ministerial act. If there were any stock outstanding and the Board of Governors ordered that stock cancelled and turned it over for cancellation to the Federal Reserve Bank, this act of cancelling would be a ministerial act, because the Act, itself, says, “It shall

be within the power of the Board after hearing to require such bank to surrender its stock in the Federal Reserve Bank and to forfeit all rights and privileges [112] of membership.”

Then the act says, “Whenever a member bank shall . . . be ordered by the Board of Governors, under authority of law, to surrender its stockholdings in a Federal Reserve Bank, all of its rights and privileges as a member bank shall thereupon cease and determine.” [113]

(Page 72, line 7 to 17, inclusive)

How the Federal Reserve Bank of San Francisco could have anything to do with the cancellation of membership other than the physical act under order of the Board of Governors I am unable to state. Mr. Leachman, in his argument, referred to the National War Labor Board case——

Mr. Owen: May I interrupt you a moment?

Mr. Agnew: Yes.

Mr. Owen: What do you have to say about the othtr acts that we specify on page 75 of the brief?

Mr. Agnew: Well, I am not reading your brief, counsel. You can refer to those matters. I am arguing, and I don't care to go afield at this time. If I think you are wrong on your argument I will answer you on rebuttal. [114]

May I call your Honor's attention to a statement in the plaintiff's brief. I think it is an absolutely conclusive statement showing this case is a moot case put up to this court for decision in advance of any injury. Counsel says on page 93 of his brief:

“One would naturally think that an agency

of the dignity, power, and resourcefulness of such a board, and one possessed of its vast facilities, would welcome an expeditious determination on the merits of the question submitted.”

This is the part I wanted to call to your Honor’s attention:

“... and it undoubtedly hopes that if these procedural questions are decided in its favor, it will forever submerge this controversy.”

There is a statement emanating from plaintiff’s counsel that the Federal Reserve Board hopes if we can get this motion to dismiss, or motion for summary judgment, sustained, that this controversy will be forever submerged. I submit, your Honor, that that shows conclusively that the action is an action set up merely for the purpose of testing the Board’s jurisdiction at a time when that jurisdiction has not been invoked. [115]

Any other rule would make out of the licensing authority a legislative body in a position to get different types of agreements out of everybody, because when the man comes before a board, particularly such a great board as this Federal Reserve Board, and for his little bank down in Lakewood Village wants to get a bank at once, because there are 4000 people, with houses and a great industry there, he wants to get into the Federal Reserve System and have his bank insured so that people will deposit their money, and he goes before this Board and asks for a permit, and they say, “You

can only have it if you will take a condition like that.” Why, the applicant is helpless. Suppose he says, “No, that is invalid. You can’t impose that on me. I won’t have it.” What happens? As a practical matter, he just doesn’t get the permit, and the community doesn’t get a bank or banking facilities. It may not be compulsion or duress in a legal sense. In a practical sense it has every aspect of tremendous duress, and that is what happened in this case. His application was first turned down because he was supposed to have some connection with that bad boy, Transamerica, and when they became convinced that the connection with that boy had been severed and he no longer was tainted with association with that thing, they said, “Yes, you can have it now. You meet the conditions. But you [116] can only have it on condition that if that bad boy ever gets a single share of your stock you are out in the cold again, although by that time you are an operating bank and the community relies on these facilities and has been built up on the idea that you have banking facilities. You are out in the cold as a blacklisted bank.”

Your Honor, that is the kind of duress that exists practically always when an applicant for license goes before a licensing authority and is asked to take a condition that they have no right to impose. He is practically defenseless. He may think, “They won’t ever bother me or rise up to hit me,” but he has to take it, and in consequence, under the practical duress of the system, this Board of Governors say, if it saw fit, could impose one

condition as to Bank A and another condition as to Bank B, and so have not a system of orderly laws, conditions pursuant to the statute, and having to do with the things they were to look into, with the solvency of the bank, the character of its management, the adequacy of its financial structure, but having to do with whatever policy was from time to time adopted by the Board in the secrecy and privacy of its own board room in Washington.”

[117]

Well, now, Mr. Willkie had at least thought—of course, we are rather naive souls—we thought that if we made them party defendants, with a high sense of their duty to the banking world and to this plaintiff, they wouldn’t be technical, they would say, “This plaintiff bank is entitled to know where it is at, and we will voluntarily appear and waive, and so forth, and we will voluntarily appear so this thing can be settled. They are entitled to have it settled.” This little bank down at Lakewood Village is not engaged in any game between counsel, [118] or in trying to have little principles of law settled. It wants to know whether that condition is good or bad. [119]

I want your Honor to understand this as very crucial in the case. It does not make any real difference to us whether this Federal Reserve Board is held to be an inhabitant here. It does not make any real difference to us whether they, [120] in the desire to arrive at a quick determination of the merits, voluntarily appear. It does not make any difference to us whether they are a party to the

case, or not. When the complaint was first prepared we did not make them a party. It was largely with the idea that they might be willing to come in and have a determination of the matter on the merits and get it quickly decided that we concluded to make them a party defendant. [121]

They say, and I agree with them, I don't think they have got any authority to do anything unless they can proceed under 327 that I just read, and this says that if we have violated the provisions of 321 to 331, and I say that means valid conditions thereunder, they can, after hearing, require such bank to surrender its stock. [122]

We have got so far in the proceeding. What is going to happen with the bank here, and we are predicated on our thinking, your Honor, on the idea that this is an invalid condition and does not give any basis of authority of law, which they have to have for that order. What is this bank going to do? Is it going to carry out its part in getting us out of the system, or isn't it?

Now, I put that to Mr. Agnew in as clear language as I could put it, in view of the seemingly sweeping claims in his brief and the seemingly sweeping statements in the affidavit of Mr. Day that they didn't intend to do anything.

Why, your Honor, he didn't think of this. If he did, when he said that, he didn't honestly mean it, because his evasive answer to my question as to what they did do or would do in that day when, based upon condition No. 4, the Board had purported to terminate our membership—what did they

purport to do? Did they intend to cancel our stock and cease paying us dividends and prevent us from voting and refuse us discount [123] privileges when we came in? He didn't answer, and when yesterday he got around to this very crux of the case and seemed to make it turn on the purely ministerial act of writing the word "cancelled" on the book with respect to our stock, he was right at the guts of his case, and I asked him to deal with these other things. He has not answered them in the reply brief. He has had two months to get at the guts of that thing, and last Saturday I got something called a reply brief, and not a word on it, not a word on it, some little new additional trivial arguments, and some authorities that have no application, but not a word on this thing that goes to the very heart of this case.

The Court: We will take a recess, just for a few minutes.

(Recess.)

Mr. Owen: Your Honor, before recess I was dealing with the question of what the Reserve Bank in San Francisco, what things it would have to do in the event of an order made by the Board acting under 327 and 328, an order made by the Board predicated on condition No. 4, the order of the Board stating that we had violated sections 321 to 331 of the statute, and declaring our rights forfeited. Now, on our predication that Condition No. 4 is absolutely invalid, null and void, why, then the action of the Board of that kind would be abso-

lutely null and void. It would not be a guide or charter of authority of any kind to the Federal Reserve Bank here to do anything, and we want to know exactly what the bank's position would be in [124] the light of that clear argument of ours, and in the light of the sweeping claim that they didn't intend to do anything, and in Mr. Day's affidavit and in Mr. Agnew's brief we got an evasive answer.

So we specified at page 75 of our brief, and we proceeded on the theory that they would obey the voice of the master, that they would go ahead and do the things as if the order of the Board were a valid order. Now, if the Board issues a valid order that does not end the matter, your Honor. There are a lot of things the bank has to do. It cancels the stock if the offending bank does not turn it in. It ceases to pay dividends on the stock. It returns the bank's subscription money to the offending bank. It thereafter refuses to permit the offending bank to vote on its stock, and it refuses it all the valuable rediscount privileges, and automatically as a result of its losing that status as a stockholder of the Reserve Bank, the offending bank ceases to be an insured bank.

Now, we are confronted, we are confronted with those acts that this Reserve Bank will have to do in order to make effective an order of the Board under 327 after they have had a hearing and after our client has said, "We will not surrender our stock because your proceeding was absolutely invalid."

So, your Honor, we have a great mass of things they have got to do in making this condition effective. It does not make the slightest bit of differences whether they imposed it [125] or not. They have got to do a great many things to make it effective, and if it is invalid and we are confronted with the idea they may do those things, your Honor, all the declaratory judgment cases say that is just the time for a poor citizen confronted with this thing to come into court and ask for a declaration of where he stands under things of this kind. [126]

Now, your Honor, on that point of discretion, Mr. Agnew, in his first brief, squinted at the idea that there must be some element of discretion involved here, that this court couldn't really decide whether this thing was valid or invalid without looking into surrounding circumstances, without looking into the reasons why this condition was imposed, and he thought it was incumbent upon us to allege reasons, whatever they may have been, and then nullify the propriety of their reasons. In later points in his brief he tried to make it appear that [127] we didn't have a case under the removal of a cloud on title. He came around with this point, that this condition is either valid or invalid right on its face. We don't have to consider the things that motivated the Board. They either had authority to do it completely, or they had not, and more important still, more important still, your Honor, is the position taken by counsel for the Board that is the source of the authority for this condition. What do they

have to say about it? I am reading a quotation from pages 49 and 50 of their brief as follows:

“Plaintiff pleads that the Condition No. 4 is ultra vires, null and void in all respects; that the Board had no authority in law to prescribe or exact such condition”—that is a correct statement—“The condition is pleaded en haec verba. The Board’s power or authority to prescribe or exact this condition is or is not found in the law. It either has the power or it has not. If it has the power, no court can interfere with the exercise of it. If it does not have the power, the condition, as pleaded by plaintiff is null and void.”

Now, that is what they say. If they didn’t have the power, this condition, they say with us, is null and void.

“It is only necessary to read the condition to determine whether or not it has the power, since everyone is presumed to know the law. A mere reading of the condition [128] gives the answer whether or not it is a valid provision.”

I agree with that 100 percent. I agree with that. That condition, right on its face, is either good or bad, and, your Honor, it is just so inconceivably bad that I am sorry that I have taken so much of the time of the Court this morning and so much in my brief to try to demonstrate our conviction to that effect. [129]

Now, what is the next thing that is said? So much for the contract theory, your Honor, and so

much for the idea that the Board is an indispensable party.

“Well,” says Mr. Agnew, “you haven’t alleged particulars [130] as to irreparable damage,” and he springs on us as a nice little finding the Montgomery Ward case. Well, your Honor, this is a declaratory judgment suit, not an injunction suit. This is a declaratory judgment suit. We are not here seeking an injunction. We haven’t got any motion before you for an injunction. If we had a motion before you for an injunction the Montgomery Ward case would apply, and then on our motion papers, of course, not on our bill——

Mr. Agnew: Do I understand you to say in your argument you are not asking for an injunction?

Mr. Owen: Not at the present time, sure. We have an incidental prayer——

Mr. Agnew: You are asking that the Board and the Bank both be enjoined.

Mr. Owen: After the Court has declared——

Mr. Agnew: You are not asking for an injunction pendente lite?

Mr. Owen: I am not asking for an injunction pendente lite. I may do it after the Court has declared. We may not even ask it then, and we say so in our brief, your Honor.

I have perfect confidence that if this court declares that condition null and void heed will be given to that and we won’t need an injunction to prevent something being done, and if we find we are wrong we will come in with an affidavit on the

facts of the situation at that time, but this is a declaratory [131] judgment suit. We base the jurisdiction of the court on the idea that this is a declaratory judgment suit. We say in our briefs that we may or we may not pray for an injunction. That prayer for an injunction is one of the customary prayers thrown in at the end of practically every declaratory judgment complaint, and I have looked at lots of them. The Montgomery Ward case was a case where they wanted an injunction right now. [132]

The Court: Haven't you a right to a hearing as a matter of law?

Mr. Owen: After they have started a proceeding, to say, "You have violated the statute," we can't institute the proceeding. We can't do anything. I discussed with your Honor a little while ago what was involved in the hearings we would have when we get before them. There is the condition. There is the purchase of stock by Transamerica, no question of fact. The condition is invoked. They have given us the 60-day notice. What can we say? We can only say that this is a bad condition, your Honor. Is that a remedy? Suppose they say, "Well, we shall stick to our original. You can't go behind us. There is no way of getting around us. We just stick." Is there any appeal from that? No, there is no appeal, nothing we can do about it. We are right back where we were before, and, of course, by that time we have a ruined bank, an absolutely ruined bank, while we are going through that process of the 60-day

notice, the pendency of the proceedings, the hearing, the final order. The only remedy we would have would be to come before some court and ask for declaration. That is not a remedy. [133]

For proper disposition of each of the motions before this Court, it may be assumed, for the sake of argument, that [134] that condition is invalid, and still the motions should be sustained. [135]

I would like to pose a question here, and I would like to [136] see what the answer would be. Suppose that this court, as a result of this hearing, would hold that the Board of Governors of the Federal Reserve System is not subject to its jurisdiction and should dismiss the suit as to the Board, and should likewise hold the same thing as to Mr. Grady, the Federal Reserve Agent, and should enter an order in compliance with the wishes and contentions of Mr. Owen, here, that the court has jurisdiction over the Federal Reserve Bank of San Francisco, and suppose that this Court should go on and later enter an injunction against the Federal Reserve Bank of San Francisco, enjoining that bank from doing anything that would in any manner fail to recognize the Peoples Bank of Lakewood Village as a member bank of the Federal Reserve System; then suppose that the Federal Reserve System Board of Governors, acting within its statutory power, would serve notice on the Peoples Bank and say, "We want you to withdraw your membership." Then suppose the Peoples Bank would say, "I am not going to do it. I refuse to do it. You don't have the power to make me do

it." Suppose the Board would hold a hearing and under due process, after considering the matter, finally come up with the conclusion that they should be expelled from membership, and should enter an order to that effect, and then suppose the Board of Governors of the Federal Reserve System would notify the Federal Reserve Bank of San Francisco. There the bank would be, under an injunction from this court, saying that it must recognize it, and it also would [137] be under an order from the Board that they are no longer a member. Now, the officers of the Federal Reserve Bank of San Francisco would certainly be in a dilemma. They would be afraid not to go ahead and recognize it as a member, because they would be possibly subject to a contempt action by this court. On the other hand, under the law in this matter, they would be violating the direction and order of their superior in Washington if they continued to recognize them as a member.

Now, the law also provides that the Board of Governors of the Federal Reserve System may remove officers of this local bank from office. They can remove them——

Mr. Agnew: You mean of the Federal Reserve Bank.

Mr. Leachman: That is right, of the Federal Reserve Bank, they can remove the president, the vice-president, any of the officers. If they went one way they would be in contempt. On the other hand, if they went the other way, they would be out of a job and on relief, maybe.

That question illustrates forcibly to your Honor that the exclusive and sole jurisdiction in this matter of enforcing the condition lies in the Board of Governors of the Federal Reserve System, where it is placed by law. I don't believe that it can be argued that the Board cannot impose conditions of membership, because the act expressly gives it discretionary power to grant them, grant the memberships, and if a bank stands on its own bottom, and has its own peculiar problems, we don't think [138] it can be argued, or is argued that the Federal Reserve Act, or the Federal Reserve Bank of San Francisco can impose, in the first instance, or can strike down in the second instance a condition imposed by the Board. We think that only a court of competent jurisdiction can review an order of the Board, and then only when it is acting in excess of its authority and not within its discretionary power. [139]

Mr. Agnew: If your Honor please, I am going to tax your Honor's patience a very short time. There are one or two points I want to cover, but before doing so, for the purpose of the record, I would like to formally offer in evidence the affidavits which have already been filed in court, the affidavits of Mr. Day.

The Court: Is there any objection?

Mr. Owen: No objection. I presume Mr. Parker's affidavit [140] will be received also.

Mr. Agnew: I am not offering it.

Mr. Owen: I offer it.

Mr. Leachman: Do you want Mr. Grady's affidavit? I, like, you, thought they were before the Court.

The Court: Let them all go in, so there is no question about it. [141]

I was quite surprised, might say almost dumfounded, to hear counsel this morning say that really an injunction was not what they wanted. I have understood all the way through, from reading counsel's brief and from the pleading filed in this case, that an injunction was just exactly what they wanted.

Evidently, counsel does not believe in the efficacy of prayer; because the prayer of its complaint, in the third division, reads as follows: [142]

"That the defendants and each of them, and the officers, attorneys and agents of each of them, be permanently restrained from the enforcement of said condition, or from taking any steps predicated thereon to effieuate the cancellation of plaintiff's stock in defendent, Federal Reserve Bank of San Francisco, and the termination of plaintiff's membership in the Federal Reserve System."

I thought that was what plaintiff wanted. I thought that was one of the principal things they wanted, but now we are confronted at this late date with a statement by counsel, "Probably there is no imminent danger, probably there is no impending threat, or at least our position on that is weak, and therefore we will recede from the idea

that we do want an injunction and say 'Let us forget about the injunction.' What we want the Court to do really is to interpret our contract."

What would that result in, your Honor please? My friend, Mr. Leachman, described the situation in some harrowing detail with regard to the dilemma in which the Federal Reserve Bank of San Francisco would be placed if this court should hold that the condition imposed was invalid and must be ignored, and, of course, that would imply injunctive relief, and then the Board of Governors later on took action to cancel this membership and order the officers of the Federal Reserve Bank not to recognize plaintiff as a member and not to discount its notes or pay it interest on the stock which it holds in the Federal [143] Reserve Bank of San Francisco. Certainly, the position of the Federal Reserve Bank would be anomalous, to say the least. But we are now narrowed down to this proposition: "We don't want an injunction. It is very doubtful that the Board of Governors of the Federal Reserve System is before the court properly, but we do want the court to tell us, or tell somebody, what this condition means, and whether or not we have to obey it."

Well, if your Honor please, a mere reading of the provisions of the Federal Reserve Act to which I have referred, section 9, will show conclusively that the authority to grant membership emanates from the Board and from the Board alone, that the authority to impose conditions is in the hands of the Board and in the hands of the Board alone.

How this court, under those circumstances, could even word a decree which would be binding upon the Federal Reserve Bank of San Francisco, without the Board of Governors before it, is a mystery to me. I wish that counsel, during the course of his discussion, had taken up that form of decree, because I don't see how it could possibly be framed.

[144]

Mr. Agnew: That is exactly the argument our own Circuit Court of Appeals made in the Asiatic Case, in which they said that a decree against the inferior with the superior absent would be futile, because the superior could remove the inferior and make the decree a nullity.

Mr. Owen: In this particular case the superior can't remove the Federal Reserve Bank of San Francisco. It may remove some officers, but if we have a decree with respect to the Federal Reserve Bank of San Francisco it is a complete entity under the law and the Board of Governors can't remove it or do anything with it. I don't care how many officers they remove. If this court enjoins the Federal Reserve Bank of San Francisco from carrying out this invalid condition, it can deprive us of our membership in the Federal Reserve System, because we are a member of the Federal Reserve System only and solely by virtue of having stock in that bank. That is the only qualification necessary. That is the reason we are here, your Honor. This condition would be a condition that would take that stock away from us, and

if we can hold onto that stock and prevent this Federal Reserve Bank from depriving us of that stock, we are still members of the Federal Reserve System, and I don't care what the Board of Governors does, but I don't believe, I [145] don't believe, and I am astonished that it would be suggested that if this Court, in the exercise of the ample authority given to it by the declaratory judgment statute to ascertain the rights of aggravated parties against a subordinate, if this court ascertains that we have rights that we ought to know about this condition, that it is invalid, if the court merely says that, I don't—I don't know much or I don't much care about an injunction—I don't believe the Federal Reserve Board in Washington, or the bank, would act in contrariety to that decision. It is inconceivable.

The Court: You are very earnest about what you are saying. That is the reason I have this patience. Now, in the event I agreed with your view, would you outline the order this Court would make?

Mr. Owen: Your Honor, I have not seen the exact phraseology.

The Court: I am not asking for exact phraseology. I just want to get a general idea from you.

Mr. Owen: "This Court finds and determines that Condition No. 4 attached to the permit is null and void."

The Court: And basing it on what?

Mr. Owen: Basing——

The Court: Basing that order on what?

Mr. Owen: You have a declaratory judgment complaint before you. You have a notice to dismiss, the equivalent to a demurrer. You overruled that. Let us assume you overruled their motion, [146] your Honor. If they then want to go to trial on the merits, we can go on to a trial on the merits, of course. If they want to stand on the demurrer and say that there is no issue of law here, right on their motion you can enter that order. They made a motion. You can overrule that motion. They can answer it. We can go to trial. We are anxious to get to the merits. Suppose they say that there is no fact to try and that they will rest on their motion——

Mr. Agnew: Are you contending that such an order could or should be made against the Federal Reserve Bank alone?

Mr. Owen: Yes.

Mr. Agnew: That is all I want to know.

The Court: Then, if I follow you, the only one I need to concern myself about is the Federal Reserve Bank.

Mr. Owen: That is right. The only one you need necessarily concern yourself about.

The Court: Then I don't need to concern myself about whether it is an indispensable party, or not.

Mr. Owen: Oh, yes. It is it an indispensable party then I have no suit at all. [147]

The Court: Just a minute. How am I, from this record, to determine in the public interest what they may or may not have done?

Mr. Owen: Your Honor, he says it is a privilege, but privilege subject to the exercise by the Board of proper discretion.

Mr. Agnew: That is correct.

Mr. Leachman: That is right.

Mr. Licking: The court would also be reviewing the discretion of that Board when the Board is not before the court and may not be before the court, and before the Board has acted in the premises.

Mr. Owen: Well, if we are in the realm of discretion and we are asking the Court to rectify an abuse of discretion, why, the Board of Governors in Washington is an indispensable party. We don't contend otherwise.

Mr. Agnew: We are not in the realm of discretion. We are in the realm of speculation, as to whether or not they are going to do anything.

Mr. Owen: We are talking about their power to impose this condition.

Mr. Licking: You are asking the Court to hold, in the [148] absence of the Board, that the Board had abused their discretion, and I asked if that were not unusual and if there were any occasion or any cases warranting that.

Mr. Owen: Aren't you still talking about discretion in creating the condition?

Mr. Licking: No, the exercise of a discretion conferred by the statute.

Mr. Owen: In imposing a condition, because we haven't got to the point of doing anything under it.

Mr. Agnew: Until we reach that point we are in the realm of speculation.

Mr. Owen: We are not in the realm of speculation that this condition hangs over this bank and jeopardizes its condition, and under the law of declaratory judgments a man in that position does not have to wait six months or two years until some board sees fit to say, "We will or won't enforce that against you." He is entitled to come in and find out where he is at, to say, "This thing is hanging over my head and I want to know where I am at." Borehard has a whole paragraph and a lot of citations on the propriety and use of declaratory judgments to get a determination from the court that the Board in question had no power and no right. That is just exactly why we are here.

I want to come to the abuse of discretion. Maybe I don't read the English language, but Mr. Leachman in his brief said that a mere reading of that condition determined whether [149] it was valid or invalid. Now, your Honor, if any discretion is involved it would necessarily have to have a trial to see whether or not the facts were such. If that is discretionary you would have to have a trial to see whether or not the facts would justify the making of that kind of an order as an exercise of discretion. We would be coming in here and saying that was an abuse of discretion, and that there was an abuse of discretion for reasons A, B, C and D, and your Honor, assuming we are here or in the District of Columbia, and that was our contention, that they had abused their discretion and wanted the order declared null and void on that basis, we would allege A, B, C and D, that did not appear on the

fact of the condition as the facts which constitute the abuse, but Mr. Leachman says, and I agree with him, that they either had the power to impose that condition or did not. We are not dealing with discretion. We say they had absolutely no discretion to impose this condition.

When it comes to things going to whether the applicant bank has adequate capital, or not, and whether the proposed management has adequate experience, or not, and whether the history of the bank, in order to be admitted to deposit insurance, is good, they look into the history of the bank and those things. They are in the realm of discretion, you Honor. They have got to pass judgment on some facts, and if they say, "We don't think the capital of this bank is adequate and we admit them on condition that they put in \$50,000 more, or we don't think [150] this management is good because the president has had no experience, and we admit them on condition they get a president who has had some experience in banking," they are in the realm of discretion and nobody could come and upset that kind of a condition without showing abuse, but when they come along and say that this bank, which they have found to be satisfactory and within every standard laid down by the statute is all right and a perfectly good bank, perfectly entitled to admission, and will be admitted, it is in, and it has not any business to be in unless they found that everything is all right. It is in. Now, it has got to get out if a single stockholder, with one share, does what he has a perfect right to do, to

wit, sell that one share to Transamerica Corporation, that has a perfect right to buy that stock, and the object of this clause is not to help that little bank; oh, no, the object of this clause is, I now find, to enforce the Sherman Law against Transamerica. That is the first time I ever heard it, but I get a hint from Mr. Leachman that the object of that clause was to enforce the Sherman Law.

Mr. Leachman: I told you a month and a half ago that was in the picture. It is no surprise.

Mr. Owen: But not with respect to this particular bank. It is a surprise here. It was not in other situations. I am not making my argument on the basis of surprise, but on the basis that even if they have powers to enforce the Sherman Law against [151] Transamerica, that does not give them authority to drive this little bank out of the Federal Reserve System, when the bank is a sound bank, simply because Transamerica acquires one share in it, something that has no relationship to the bank, whatsoever, and something the bank had no control over and couldn't stop even if it knew about it, and in this particular case it didn't know anything about it.

Mr. Agnew: You are arguing now that the Board of Governors had no authority to impose this condition.

Mr. Owen: That is right.

Mr. Agnew: And you are arguing on a state of facts where the Board of Governors is no longer before this Court, because this Court has no jurisdiction over it.

Mr. Owen: I am arguing that since our complaint on this condition is based on an utter lack of power, that the Board is not an indispensable party.

Mr. Agnew: Will you tell me what the words "arbitrary, discriminatory, ultra vires, capricious, and unreasonable" mean in the complaint, if they don't mean that the Board of Governors exceeded its authority in imposing this condition?

Mr. Owen: I will tell you what they mean. They mean what I said at pages 42 to 45 of our brief.

The point, your Honor, Point 2 of our brief, is that not only is the condition invalid for lack of authority, and I didn't have to go any further than that, your Honor, but it is [152] also invalid because it is arbitrary, unreasonable, unjust, and because it is discriminatory. Now, I tell you that this Board has no power to create a discriminatory condition, and I am coming to the point that Mr. Leachman made on that.

True, he says we can have particular conditions in particular banks. Not every bank is like every other bank, true. They can say to Bank A, "You can't come in unless you add \$50,000 to your capital," and they can say to Bank B, "You can come in without adding anything to your capital." Well, is that discriminatory? No, your Honor, if there is some general principle back of that applicable to all banks, and those are the other conditions in particular cases, but if they seek to establish a condition that is not applicable to every bank, that is a discriminaory condition, and it is just as

invalid as if they had no power to create conditions at all. They have got no power to create discriminatory conditions or capricious or arbitrary conditions. The law is clear on that.

In the Manhattan General Equipment Company case in 297 U. S. 129, the Supreme Court said:

“And not only must a regulation in order to be valid be consistent with the statute, but it must be reasonable.”

It can't be discriminatory. That is ABC law. There is no discrimination if the same principle is applied to everybody, but if that same principle is not applied by this Board to all banks, if it admits 2465 State banks to the system without [153] any word about any of their stock being held by a holding company, and then picks out Mr. Peoples' Bank and says, “You can't be in the system if Transamerica gets one share of stock,” they have got no power to do that. It is not an abuse of discretion. They just can't do it. That is just what they sought to do here. They have admitted California State banks into the system since the lawsuit was started. Why should they discriminate in favor of that bank against the Peoples Bank? They can't do it. It is utterly beyond their power. It is not an abuse of discretion at all. They are, therefore, not an indispensable party.

Mr. Licking: May I ask one question?

Mr. Owen: Certainly.

Mr. Licking: What about the argument that the statute, with a provision for administrative hearing, contemplates the possibility that the Board, if

it has made a mistake, should be given an opportunity to rectify its mistake before the court on this bare record attempts to rectify it for them in heir absence?

Mr. Owen: Mr. Licking, I argued that at some length this morning.

Mr. Licking: If it has been presented, pardon my interruption.

Mr. Owen: It has been argued. I don't think it is necessary to go over it again. That provision here is not an administrative remedy. [154]

Now, your Honor, the form of the decree, which seemed to bother Mr. Agnew——

Mr. Agnew: No, I think it bothered the court. The court asked you the question.

Mr. Owen: You raised quite a question about the form of the decree we could have here.

The Court: You focused my mind on it. That is the reason I asked for it.

Mr. Owen: You went to great length and seemed to be bothered about it.

Let us assume we are at the end of the trial and you have overruled their motion and we are at the point of what kind of a decree your Honor could make in the situation. The only decree is a declaration that this condition is null and void. We are content with that.

The Court: I must have something of substance to base that on. That is what is bothering me.

Mr. Owen: The substance is an invalid condition, which we assert is invalid, and the bank says

it is going to support. It says it has nothing to do about it.

Mr. Agnew: What party on this side of the table has said that condition is valid or invalid? We are not concerned with this question.

Mr. Owen: This is all play we are having. I am choking in a vacuum. [155]

Mr. Licking: There is no question that if there was a mistake made then the administrative hearing should be allowed to come in there. We are taking no position on that, for that reason.

Mr. Owen: Your Honor, look at this array of counsel. Where do they stand? Is this condition valid or invalid. I challenge them. We are confronted with this monstrous condition. Why do I have to get up and argue whether it is valid or invalid? Let them say something about it.

Mr. Agnew: I will say something if you will come into a proper forum with a proper complaint and proper parties, and that question will be tested.

Mr. Owen: If you don't say it is invalid I have no controversy with you anywhere. I don't care what court you are in.

Mr. Licking: Do you want to create a controversy now when it is not created by the pleading?

Mr. Owen: The controversy exists.

Mr. Licking: What is there here to allow the court to say there is a controversy?

Mr. Owen: We allege in our complaint.

Mr. Licking: Outside of that, I say.

Mr. Owen: We are here on a motion to dismiss our complaint. We allege in our complaint that

the controversy exists. I think it is apparent it does, and in the case of *Waite v. Macy* the court said that from the condition of this kind he would assume [156] that it existed. The Supreme Court said that from conduct of this very kind it would assume that the controversy existed.

Your Honor, before this complaint was filed I looked at quantities of declaratory complaints that were sustained, and all you have to allege is that a present controversy exists.

Now, if we haven't got a present controversy, the way these gentlemen have ben acting, I don't know what w have got. They may have no immediate intention to chop our head off with the axe, but we have certainly got a present controversy as to whether or not that condition is valid or invalid.

I do contend it is imminent. I do contend there is irreparable damage. I do contend we don't have an adequate—I mean an administrative—remedy, but all of those things are of no consequence, and since they are of no consequence under the authorities I did not bother your Honor with marshalling the facts.

We are here on demurrer to a complaint. Under the statute that is the proper form of pleading. It does not lie in our mouth to say we haven't any controversy. On this motion we have a controversy.

Mr. Licking: Between whom?

Mr. Owen: Between us and the Federal Reserve Bank of San Francisco, between us and Mr. Grady, between us and the Board. We don't have to have Mr. Grady and the Board. We do have the bank,

and we allege a controversy with them, and on our [157] motion that is admitted—I mean on your motion that is admitted for the purpose of argument.

Mr. Leachman: Mr. Owen, I hesitate to ask another question.

Mr. Owen: No, I want to meet all of them.

The Court: As far as I am concerned, you can stay another day if it will be helpful.

Mr. Owen: Your Honor, I greatly appreciate your patience.

Mr. Leachman: In connection with the statement you just made there, does the Court not only have the right by the decree—a Federal court of limited jurisdiction not only have the right but always have the duty, if there is a question about the Court having jurisdiction, to look into it himself, and he can look beyond the pleadings to affidavits or even the evidence, and witnesses, and make a search and inquire as to whether or not your cause of action is as pretended by your pleadings, or what it is in reality.

Mr. Owen: Not on a motion to dismiss, not on a motion to dismiss.

Mr. Agnew: How about a motion for summary judgment?

Mr. Owen: Yes, on a motion for summary judgment, but what do you say on a motion for summary judgment? On your motion for summary judgment you present the affidavit of Mr. Day, and what does Mr. Day's affidavit say?

Mr. Agnew: It says that the Federal Reserve Bank of San [158] Francisco had no power to impose the condition.

Mr. Owen: That is a question of law.

Mr. Agnew: It says the Federal Reserve Bank did not formulate the condition, that it was formulated by the Board and transmitted to the Bank without comment or recommendation——

Mr. Owen: It says this——

Mr. Agnew: Let me finish.

Mr. Owen: It says, “We had nothing to do with the imposition of the condition and the specification of facts”——

Mr. Agnew: Pardon me, counsel. It says that we have no intention of attempting to enforce the condition.

Mr. Owen: I am coming to that.

Mr. Agnew: And no power to enforce the condition.

Mr. Owen: I am coming to that. It says two things, and I dealt with that this morning. It says two things, “We did not have anything to do with the imposition of the condition,” and seeks to sustain it by the record of correspondence.

I don't think the facts are—our counter affidavits sustain that—but I don't care, I don't care. *Colorado v. Toll* and all these other cases, the *Nehr* case, the *Macy* case, all were cases in which the subaltern had nothing to do with the imposition of the regulation, so I don't care. That is wasted breath, your Honor, and wasted paper.

They say, "We don't have anything to do with the enforcement of the condition, making it stick, we don't have anything to do [159] with depriving this stockholder of our bank of his stock."

Now, that is what they say, and we don't intend to—now, whether they have any power to deprive us of our stock in the purported enforcement of Condition No. 4 is a question of law. They say, "Look at the law. We don't have any power." We assert they do. Mr. Day's affidavit adds nothing on that, and in so far as he says anything along that line, your Honor, it is a brief.

Now, I called attention on page 75 of my brief as to a lot of things they had to do in order to make this stick, and yesterday when Mr. Agnew was talking on that and I wanted him to deal with those, did he deal with them? No, he would not. I tried to get him to answer, as he is getting me to answer, and I am not afraid to answer, but he was afraid to answer. He wouldn't answer, but he has had a chance since to answer, because I have rubbed it in today. Has he answered? No, he has not answered, because he can't, your Honor.

If, purporting to act on Condition No. 4, this Board should do anything, and we don't think they can, but suppose they did, and finally said to the Federal Reserve Bank, "This Peoples Bank is no longer a member of the Board," and I am assuming that that is an invalid order, because based on an invalid condition, and we are recalcitrant about it, what is Mr. Agnew's bank going to do? He says, "We have nothing to do. Maybe we will

perform a ministerial act of writing 'Cancelled' on our books." Well, [160] that is something to do. That is important. Suppose we demand dividends on the stock. We are still stockholders. That invalid order is not good. Can they say, "You get no dividends"? Suppose we went some rediscount privileges. We are still a stockholder. Are they going to say, "No." Suppose we want to vote and they say "No"? And suppose they want to return to us our subscription, and we say "No, you have no right to return it"? And they insist and try to force it back on us. The only effective things that can be done would be to deprive this plaintiff bank of its stock in the Federal Reserve Bank of San Francisco and thereby deprive it of membership. The only effective things, the actual concrete acts, must be done by this bank, there is no *doubt it*.

Now, I put up to them what they did intend to do if we were confronted with what is inevitable if this is not stopped, if we were confronted with an order of the Board to get out and we said we wouldn't. I put up to them what we would do, because he had come along with very glorious and sweeping declarations of intent not to do anything, and of course he ducked, he didn't answer, he evaded. His answer was an admission that they would of course proceed to do those things which I have described as being done to carry out the invalid order of the Board. That is all there is in Mr. Parker's affidavit, and I am not afraid of Mr. Parker's. I am just perfectly content that

this case should be decided, your Honor, on a motion for summary judgment. [161] We made a counter motion, your Honor. Of course, I know that under the rules plaintiff is not supposed to make a counter motion until there has been an answer; but we are anxious to get this disposed of.

Mr. Agnew: You just threw it in for what it was worth.

Mr. Owen: No, I did not just throw it in for what it was worth. I threw it in with the idea that somewhere along the line this body of men would help us get a decision on the merits.

Mr. Agnew: You admit under the rules it is not permissible.

Mr. Owen: Certainly. I say so in my brief.

Mr. Agnew: You encumber the records of the Court by filing it.

Mr. Owen: Well, I have encumbered the record of the Court by talking fifteen minutes too long, more than I did with that little motion.

Have I answered all the questions you had in mind, Mr. Licking?

Mr. Licking: Yes. The situation is that the Court must assume that the Board will not rectify its own mistake and then assume they will act at some future time. Those two assumptions are basic to the relief you request.

Mr. Owen: No, it is not basic, because here is a condition hanging over our head causing us damage at the very present moment, and under the Declaratory Judgment statute we are entitled [162] to a declaration which relieves us from that peril.

Judge Birdzell calls my attention to the fact that I had argued that the Board had no power to make agreements. Of course, I was arguing that they had no power to make agreements under imposing conditions or granting permits to become members. Of course, they have power under other specific provisions to make agreements. I didn't argue that they had no power of any kind to make agreements, but that they have no power under this statute to make agreements and enforce agreements. They have power to impose valid conditions and to enforce valid conditions, but no other power.

Mr. Leachman: If they have the power to impose conditions, doesn't the bank agree to the conditions in getting the permits, if they impose conditions?

Mr. Owen: Of course, Mr. Leachman, there is a kind of tacit agreement, if they hadn't said anything more, but accepting the thing with the conditions, they couldn't do anything else. That doesn't mean anything, and the cases I cited this morning, the mere express agreement to comply, does not add any weight. You can't bind a permittee by getting an express agreement from him on an invalid condition. I think I have said enough.

I want to again express my appreciation of the patience of the Court. I don't think I have ever known a court that was so liberal to counsel, certainly not so liberal to me. [163]

[Endorsed]: Filed Oct. 19. 1944. [164]

[Title of District Court and Cause.]

ORDER OF MOTIONS

The motion of each of the defendants to dismiss: the motion of the defendant Federal Reserve Bank of San Francisco for Summary Judgment; the motion of the plaintiff Peoples Bank for Summary Judgment; and the motion of the defendant Federal Reserve Bank of San Francisco to strike plaintiff's motion for Summary Judgment and each and all of said motions having been heretofore submitted and the Court having read the pleadings and affidavits filed on behalf of the parties and having considered the arguments and briefs of counsel, the Court is of the view that the defendant Board of Governors of the Federal Reserve System is an indispensable party not properly before the Court and that the complaint does not state a claim for equitable relief or for declaratory Judgment within the Jurisdiction of this Court as to any of the defendants, as appears from the opinion filed herewith.

Each of the motions to dismiss and the motion of the defendant Federal Reserve Bank of San Francisco to strike plaintiff's motion for [165] Summary Judgment are therefore granted. The motion of the defendant Federal Reserve Bank of San Francisco for Summary Judgment is denied. The motion of the plaintiff Peoples Bank for Summary Judgment is denied.

Dated: November 17th, 1944.

MICHAEL J. ROCHE

United States District Judge.

[Endorsed]: Filed Nov. 17, 1944. [166]

[Title of District Court and Cause]

OPINION

This is a suit by the Peoples Bank, a State banking corporation organized under the laws of the State of California, to annul and enjoin the enforcement of a condition of membership required by the Board of Governors of the Federal Reserve System as a prerequisite to granting plaintiff the right to become a member bank of the Federal Reserve System.

Following the jurisdiction allegations, and those identifying the parties, the complaint alleges (Par. IV) that on or about November 28, 1941, plaintiff, desiring to become a member of the Federal Reserve System, made application to the Board of Governors of the Federal Reserve System (hereinafter referred to as "the Board"), under the rules and regulations prescribed by the Board, for the right to subscribe to the stock of the Federal Reserve Bank of San Francisco (hereinafter referred to as "Reserve Bank"). On or about May 6, 1942, it is stated, the Board approved plaintiff's application for membership, subject to certain conditions, among which was the one complained of, numbered 4. This condition, it is stated, was as follows:

"4. If, without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation or any unit of the Transamerica group, including the Bank of America National Trust and Savings Association, [167] or any holding company affiliate

or any subsidiary thereof, acquires, directly or indirectly, through the mechanism of extension of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of usual correspondent bank relationships, such bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System."

Plaintiff claims that this condition is "arbitrary, unreasonable, capricious, discriminatory, ultra vires and null and void in all respects" in that no power has been conferred upon the Board to exact such condition as a prerequisite to membership in the Federal Reserve System. It is then alleged (Par. V) that on or about May 7, 1942, the defendant Reserve Bank informed plaintiff that, as a condition to its subscription to stock in the Reserve Bank, it would be required by said bank to accept condition No. 4 and agree to comply therewith by resolution of its board of directors. On or about May 12, 1942, plaintiff, it is stated, "being desirous of acquiring the said stock" in the Reserve Bank and becoming a member thereof "and under the compulsion of the said requirement of said defendant," accepted the condition and, by resolution of plaintiff's board, agreed to comply therewith. Although the fourth paragraph of the complaint states that the condition of membership complained of emanated from the Board, it is alleged that it was "exacted"

of plaintiff by the Reserve Bank and that, in so doing, the Reserve Bank violated the obligation imposed upon it by statute to administer its affairs fairly and impartially and without discrimination against plaintiff.

It is alleged (Par. VI) that on or about February 17, 1944, without the assistance or prior knowledge of plaintiff, Transamerica Corporation became the owner of five hundred out of five thousand shares of the capital stock of plaintiff. It is stated, upon information and belief, that this acquisition of plaintiff's stock by Transamerica Corporation was without the written approval of the Board and falls within the purview of condition No. 4 "imposed upon plaintiff by defendant, the Federal Reserve Bank of San Francisco." Notice of this purchase of plaintiff's stock by Transamerica Corporation was given the Board by plaintiff on or about April 4, [168] 1944 (Par. VII). After stating that the defendants assert that the condition is valid and enforceable, it is alleged (Par. VIII), also upon information and belief, that the defendants intend to and will, unless restrained, take proceedings, predicated on condition No. 4, to deprive plaintiff of its stock in the Reserve Bank and its membership in the Federal Reserve System, to the irreparable damage of plaintiff and that such proceedings are imminent. The validity and enforceability of the condition is denied, and it is alleged that the condition, being void, constitutes a cloud upon plaintiff's title to its shares in the Reserve Bank. Alleging the existence of a justiciable controversy and the lack of

other adequate remedy, plaintiff asks this Court for declaratory relief, for a decree invalidating the condition and for temporary and permanent injunctive relief against the enforcement of the condition or the termination of plaintiff's membership in the Federal Reserve System. However, no application for an injunction pendente lite was made.

In opposition to the relief requested in the complaint, the following motions were filed: Board of Governors of the Federal Reserve System, motion to dismiss; Henry F. Grady, motion to dismiss; Federal Reserve Bank of San Francisco, motion to dismiss and, in the alternative, motion for summary judgment. In addition, plaintiff interposed a counter-motion for summary judgment against the defendant Reserve Bank. To this counter-motion, defendant Reserve Bank filed a motion to strike. This counter-motion will be stricken. It is clear that, under Rule 56a of the Federal Rules of Civil Procedure, a party seeking to recover upon a claim or to obtain declaratory relief may move for summary judgment in his favor only after a pleading responsive to the complaint has been filed. No such pleading has been filed by the Reserve Bank in this case. The counter-motion is premature.

Moore's Federal Practice, Vol. 3, p. 3181

U. S. v. Adler's Creamery Inc., C.C.A., 2d, 1939 107 Fed. (2d) 987

Fox v. Johnson and Wimsatt, 127 Fed. (2d)

The motion of the Board of Governors of the Fed-

eral Reserve System for dismissal will be granted. This Board is an independent [169] establishment of the United States, created by the Congress to perform certain important governmental functions prescribed by the Federal Reserve Act and other statutes (30 Op. Atty. Gen. 308, 311). Neither in the enactment creating the Board nor in any subsequent act has the Congress given its consent to suits against the Board. Aside from this, however, it is undeniably true that, by law, the habitat or official residence of this Board is in the District of Columbia (U.S.C., Tit. 12, Sec. 244). Service of summons and complaint in this case was made by sending a copy thereof by registered mail to the Board at its office in Washington, D. C. The appearance entered by the Board was special, for the sole purpose of testing the jurisdiction of this Court over it. Whether or not this suit be considered as one against the United States and therefore not maintainable against the government without its own consent or Congressional sanction, it is undeniably true that the Board is not an "inhabitant" of this district and therefore may not be sued herein without its consent (U.S.C., Tit. 28, Sec. 112). That this is the law is amply supported by the authorities.

International Molders Union v. National Labor Relations Board, 26 Fed. Supp. 423

Appalachian Electric Power Co. v. Smith (C.C.A. 4th) 67 Fed. (2d) 451; certiorari denied, 291 U.S. 674

Raichle v. Federal Reserve Bank of New York (C.C.A. 2d) 34 Fed. (2d) 910

Howard v. United States ex rel. Alexander (C.C.A., 10th) 126 Fed. (2d) 667; certiorari denied, 62 S. Ct. 1297, 316 U.S. 699, 86 L. Ed. 1768

Kentucky Natural Gas Corporation v. Public Service Commission of Kentucky (D.C., Ky.) 28 Fed. Supp. 509; affirmed in C.C.A., 119 Fed. (2d) 417

Carr v. Desjardines (D.C., Okla.) 16 Fed. Supp. 346

United States v. Western Fruit Growers, Inc. (D.C., Cal.) 34 Fed. Supp. 794

Plaintiff contends that, because the Federal Reserve Act makes provision for the appointment in each Reserve district of a Federal Reserve agent who, in addition to his duties as chairman of the board of directors of the Reserve bank, is required to maintain a local office of the Board on the premises of the Reserve Bank and to act as the official representative of the Board in the performance of the functions of the Board (U.S.C., Tit. 12, Sec. 305), [170] the situation is *sui generis* and the general rule is inapplicable. With this contention, I do not agree. If it were sound, it would subject the Board to the jurisdiction of any district court in any district where a Reserve bank is maintained and a Federal Reserve agent could be found. In many of the cases in which the right of governmental agencies to be sued only in the District of Columbia has been sustained, there have been local agents with powers as broad as those accorded Fed-

eral Reserve agents, authorized to act and acting for the agency at the place where the suit was brought, but the fact that such agency existed has not been held to create an exception to the rule. Nor has the plaintiff cited any cases in support of its contention.

The motion of Henry F. Grady, Federal Reserve Agent, for dismissal as to him is likewise granted. It is not contended that Grady performed any function or had any authority to act in connection with the imposition of the condition of membership concerning which complaint is made. He is described in plaintiff's brief as "a proper though not indispensable party" (Plaintiff's Brief, p. 86). It may be true that, if he had been an actor in the matters concerning which complaint is made and if he had legal authority for such acts, he would be a proper party. But the question presented on this motion to dismiss are primarily whether the Board is an indispensable party and, if so, whether, with the Board absent, this Court can proceed with the suit as against the Reserve Agent. In other words, granting that this Court has jurisdiction of the person of the Reserve Agent, does the complaint state a claim for relief as to him and is there any justiciable controversy as to him in the absence of the Board. In matters of the kind involved in this suit, the Board is undoubtedly an indispensable party and, under the facts alleged in the complaint, there exists no cause of action against the Reserve Agent and no justiciable controversy between him and plaintiff. Plaintiff says:

“No allegation is made that the Reserve Agent took any part in the imposition upon the plaintiff of the invalid condition, but it is alleged that he, along with the other defendants, contends that it is a valid condition and intends to enforce it as against the plaintiff.”

(Plaintiff’s Brief on motion to dismiss complaint, p. 7). [171]

Regardless of what the Reserve Agent believes regarding the validity of the condition of membership (a matter which is entirely immaterial), a careful search of the law governing his statutory authority fails to disclose any provision which would confer upon him any authority to enforce the conditions or penalize plaintiff for breach thereof (U.S.C., Tit. 12, Secs. 305, 411 to 417, inc., and 445). Moreover, the mere expression by the pleader of the opinion or fear that the Reserve Agent “intends” to enforce the condition, without any allegation as to when, where or by what means the threat of enforcement was made, does not assist in stating a valid claim (National War Labor Board, et al. v. Montgomery Ward & Co., Inc., 144 Fed. (2d) 528). The power and responsibility of fixing conditions of membership for state banks applying for admission to the Federal Reserve System, as well as the administrative power to expel banks from the Federal Reserve System for violation, are vested by law in the Board of Governors of the Federal Reserve System and in that body alone. In such matters, the Federal Reserve Agent has no authority whatever

and, if an injunction were to be granted in this suit, it would be the hands of the Board which must be tied, not those of the Federal Reserve Agent. In the absence of the Board, there exists no justiciable controversy between plaintiff and the Federal Reserve Agent and no jurisdiction in this Court to hear the case as to him.

Appalachian Electric Power Co. v. Smith,
supra

New Orleans Private Patrol, etc. v. Fleming
(D.C., La.) 33 Fed. Supp. 856

Webster v. Fall, Secretary of Interior 45 S.
Ct. 148, 266 U.S. 507

Redlands Foothill Groves v. Jacobs (D.C.,
Cal.) 30 Fed. Supp. 995

Bethlehem Ship Building Corp. v. Nylander,
et al. (D.C., Cal.) 14 Fed. Supp. 201

James, Inspector v. Lake Wales Citrus Grow-
ers Assn. (C.C.A., 5th) 110 Fed (2d) 653

In opposition to the motion to dismiss and the alternative notion for summary judgment interposed by the Federal Reserve Bank of San Francisco, plaintiff very earnestly and ably argues that, even though this Court does not have jurisdiction to hear the suit as against the Board and even though it be found, as I have found, that, as to the Federal Reserve Agent, the complaint fails to [172] state a claim or cause of action upon which relief can be granted, nevertheless this Court has jurisdiction of the person of the Federal Reserve Bank and should proceed with the suit as against it. In opposition to

the motion to dismiss, it is argued that the complaint states a cause of action as against the Reserve Bank alone (Plaintiff's Brief, pp. 5, 6); that the complaint shows the existence of a cloud upon or an adverse claim affecting plaintiff's ownership of stock in the Reserve Bank (Plaintiff's Brief, pp. 87-93); and that the condition of membership is absolutely void and therefore the fact of its acceptance by plaintiff is immaterial (Plaintiff's Brief, pp. 14-55). These and the other arguments made in opposition to the Reserve Bank's motion to dismiss I have considered carefully.

In opposition to the alternative motion for summary judgment interposed by the Reserve Bank, it is argued that it is immaterial that the Reserve Bank acted in a purely ministerial and clerical capacity on behalf of the defendant Board; that the complaint alleges and the fact is that the Reserve Bank "imposed" the condition complained of as a requirement of its own and that it is neither legally nor factually true that the Reserve Bank is without authority to take proceedings for the enforcement of condition No. 4.

First, in connection with the motion for summary judgment, I have read the two affidavits of William A. Day, President of the Reserve Bank, and the counter-affidavit of W. M. Parker, Cashier of plaintiff bank, and have considered the cases cited in the briefs. It seems clear from the uncontradicted statements contained in the Day affidavits that the Reserve Bank has never taken any position with regard to the validity of the condition; that it has not at-

tempted to and does not intend in the future to attempt to enforce the condition; and that, prior to this suit, it had never received from plaintiff any complaint regarding the condition or its imposition. It is equally clear that neither the letter dated May 7, 1942, addressed by the Reserve Bank to plaintiff (Day Affidavit, Ex. I), transmitting the "suggested form" of resolution for adoption by plaintiff's board, nor the resolution itself constituted an attempt [173] by the Reserve Bank to take action independent of that of the Board with relation to the condition of membership. These were pursuant to instructions from the Board and constitute the mere action of the Board. It is also clear from the law that Congress has vested in the Board, and in that body only, the power and authority to prescribe conditions of membership for state member banks and, after administrative hearing, to forfeit membership upon proper proof of violation of the law or the regulations of the Board made pursuant thereto (U.S.C., Tit. 12, Sec. 327). Neither the Parker affidavit nor the exhibits thereto tend to contradict these conclusions. Therefore, there is ample reason to grant the motion of the Reserve Bank for summary judgment. However, due to the fact that I have concluded that I do not have jurisdiction of the subject matter of the suit as it affects the Reserve Bank and have decided to grant its motion to dismiss, the motion for summary judgment will be denied.

I am of the opinion that, as against the Federal

Reserve Bank of San Francisco, the complaint fails to state a claim or cause of action upon which relief can be granted; that as to that bank alone this suit is one against a subaltern without authority and is not maintainable; and that this suit does not present a proper case for injunctive relief, because in the complaint no coercion or compulsion in the legal sense is alleged, because it does not appear from the complaint that plaintiff is now confronted with any immediate or imminent danger of injury, irreparable or otherwise, and because, as between plaintiff and the Reserve Bank, no justifiable controversy, in the legal sense, exists. It is my opinion, also, that this suit may not properly be maintained as one to remove a cloud upon the title of plaintiff's stock in the Reserve Bank. For the foregoing reasons, the motion of the Federal Reserve Bank of San Francisco for dismissal as to it will be granted.

All state banks desiring to become members of the Federal Reserve System are required to apply to the Board of Governors, under such rules and regulations as it may prescribe, for the right to subscribe for stock in the appropriate Reserve bank. The Board, [174] subject to the provisions of the Act and subject to such conditions as it may prescribe pursuant thereto, may permit the applying bank to become a member (U.S.C., Tit. 12, Sec. 321). If at any time it should appear to the Board that a member bank has failed to comply with the applicable provisions of the Act or the regulations of the Board, it is within the sole power of the Board, after hearing, to require the offending bank

to surrender its stock and forfeit membership. The Board may, in proper cases, restore forfeited membership (U.S.C., Title 12, Sec. 327). Whenever a member bank is ordered by the Board, under authority of law, to surrender its stock holdings in the Reserve Bank, all its rights and privileges as a member bank thereupon cease (U.S.C., Tit. 12, Sec. 328). It is thus evident from the law that the Board is the only body vested by Congress with authority to admit and expel state member banks. That that is true is equally evident from Regulation H, promulgated by the Board and governing the membership of state banks (C. F. Reg., U.S.C., Tit. 12, Ch. II, Part 208). This being true, any act on the part of the Reserve Bank, looking to the imposition of conditions of membership or the enforcement thereof, would be an act on its part, without authority in law and without binding effect. The complaint alleges that plaintiff's application for membership was approved by the Board, which gave its permission to plaintiff to become a member bank subject to conditions (Complaint, Par. IV). The subsequent allegation to the effect that the Reserve Bank "required" the acceptance of the condition and an agreement to comply with it, while no doubt made for the purpose of giving this Court a semblance of jurisdiction, does not aid to that end for, at best, it must be concluded that, if true, the Reserve Bank was merely passing on to plaintiff the conclusions reached by the Board, the only body vested with authority in the premises. As a subaltern without authority, the Reserve Bank may

not be sued alone for the alleged misfeasance of the admitted superior. The relief sought is from the Reserve Board, not the Reserve Bank. To allow this suit to be maintained as against the subordinate alone would be contrary to the settled rules of equity practice. [175]

Warner Valley Stock Co. v. Smith 165 U.S. 28, 34, 17 S. Ct. 225, 41 L. Ed. 621

Gnerich v. Rutter, 265 U.S. 388 44 S. Ct. 532, 68 L. Ed. 1068

Jewel Productions, Inc. v. Morgenthau 100 Fed. (2d) 390

Neher v. Harwood, (C.C.A., 9th) 128 Fed. (2d) 846, 849

Defendant Reserve Bank also urges that the complaint does not allege a proper case of coercion or compulsion warranting equitable relief; that there is presented no proper case for declaratory relief; that plaintiff has sustained no present injury; and that, taken at its best, the complaint sets forth a case of anticipated possible future injury which may or may not be sustained, depending upon future and, as yet, unannounced action by the Board of Governors of the Federal Reserve System. It is claimed that this case is governed by decision such as the following:

Smith v. American Asiatic Underwriters (C.C.A., 9th) 127 Fed. (2d) 754

Southern Pacific Company v. Conway (C.-C.A., 9th) 115 Fed. (2d) 746

United States v. West Virginia 295 U.S. 463,
55 S. Ct. 789, 79 L. Ed. 1546

Northport Power & Light Co. v. Hartley 283
U.S. 568, 51 S. Ct. 581, 75 L. Ed. 1275

These arguments seem sound and, aside from the more important questions of jurisdiction over the subject matter, sufficient to warrant sustaining the motion to dismiss. The condition of membership complained of is certainly not self-executing. It provides merely that, if Transamerica Corporation or its subsidiaries acquire stock of plaintiff bank without the Board's permission and if the Board, being advised of that fact, gives plaintiff notice, plaintiff will withdraw from or surrender its membership in the Federal Reserve System. It is to be presumed that, the two prerequisite facts existing, if the plaintiff refused to surrender its membership in the System on notice from the Board, this would constitute a violation of the condition. But it is not alleged that the Board has taken any action of the kind described and, since over six months elapsed between the filing of the complaint in this suit and the hearing on the motions without a supplemental complaint being filed, it may be presumed that the Board has not yet acted. However that may be, it is clear that the complaint [176] presents a case of anticipated, possible injury, based, it seems largely, upon conjecture and not such a case of immediate and impending danger as would warrant injunctive relief.

National War Labor Board v. Montgomery
Ward, *supra*

Finally, it is my opinion that there is no merit in plaintiff's contention that condition No. 4 constitutes a cloud upon the title to plaintiff's stock in the Reserve Bank or an adverse claim affecting the same, in the nature of a cloud, the existence of which the Court has power to remove. Plaintiff's shares in the Reserve Bank are a mere incident to its membership therein. This stock is non-transferable, non-negotiable and has no "market value". Title to this stock must, under the law, remain in plaintiff bank so long as it is a member bank and, when and if that status is forfeited, the title to the stock is likewise forfeited. None of the defendants claims estate or interest in the stock adverse to plaintiff. Clearly a case is not presented which is governed by section 738 of the California Code of Civil Procedure. The suit sounds in personam against the Board of Governors for alleged abuse of discretion, not in rem. Moreover, if, as I have determined, this Court is without jurisdiction to hear the case, as against the Board, jurisdiction as to all other incidents of the case likewise fails.

Hartmann v. Federal Reserve Bank of Philadelphia, 55 Fed. Supp. 801.

1. The motion of the plaintiff, Peoples Bank, for summary judgment against the defendant, Federal Reserve Bank of San Francisco, is denied.

2. The motion of the defendant, Federal Reserve Bank of San Francisco, for summary judgment against the plaintiff is denied.

3. The motion of the defendant, Federal Reserve

Bank of San Francisco, to strike plaintiff's motion for summary judgment is granted.

4. The motions to dismiss filed by each of the defendants will be granted.

The Court is of the view that the defendant Board of [177] Governors of the Federal Reserve System is an indispensable party not properly before the Court and that the complaint does not state a claim for equitable relief as for declaratory judgment within the jurisdiction of this Court as to any of the defendants. Therefore, this Complaint is dismissed as to all defendants for lack of jurisdiction of this Court.

An order will be entered in accordance with this Opinion.

Dated: San Francisco, California, November 17th, 1944.

MICHAEL J. ROCHE

United States District Judge.

[Endorsed]: Filed Nov. 17, 1944. [178]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given, that the Peoples Bank, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit that part of the Order of the above entitled Court, Honorable Michael J. Roche, Judge presiding, dated the 17th day of November, 1944, and en-

tered in thte above entitled cause, which (a) grants the motion of defendant Federal Reserve Bank of San Francisco to dismiss, and (b) grants the motion of the defendant Henry F. Grady to dismiss, and (c) dismisses said action as against the said defendant.

Dated: This 16th day of December, 1944.

SANNER, FLEMING & IRWIN

By JOHN AMOS FLEMING

WILLKIE, OWEN, OTIS,

FARR & GALLAGHER

By CARL M. OWEN

[Endorsed]: Filed Jan. 15, 1944. [179]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL

The plaintiff above named, having appealed herein from that part of thte Order of the above entitled Court, entered on or about November 17, 1944, granting the motions of the defendants Federal Reserve Bank of San Francisco and Henry F. Grady to dismiss, now states the following points on which appellant intends to rely upon said appeal, viz:

1. That the above entitled court erred in granting the motion of defendant Federal Reserve Bank of San Francisco, to dismiss, for that:

(a) The said Court had jurisdiction of the subject-matter of the action;

(b) The said Court had jurisdiction of the person [180] of the said defendant Federal Reserve Bank of San Francisco;

(c) The plaintiff's complaint states facts sufficient to warrant the relief prayed for therein as against the defendant Federal Reserve Bank of San Francisco.

2. That the above entitled Court erred in granting the motion of defendant Henry F. Grady to dismiss, for that:

(a) The said Court had jurisdiction of the subject-matter of the action;

(b) The said Court had jurisdiction of the person of the defendant Henry F. Grady;

(c) The plaintiff's complaint stated facts sufficient to warrant the relief prayed for as against the defendant Henry F. Grady.

SANNER, FLEMING & IRWIN

By JOHN AMOS FLEMING

WILLKIE, OWEN, OTIS,

FARR & GALLAGHER

By CARL M. OWEN

Attorneys for Appellant

[Endorsed]: Filed Jan. 18, 1945. [181]

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF PORTIONS OF THE RECORD TO BE CONTAINED IN THE RECORD ON APPEAL

To the Clerk of the above entitled Court:

The appellant designates the following portions of the record to be contained in the Record on Appeal in the above entitled action:

1. The complaint.
2. The Motion of defendant Federal Reserve Bank of San Francisco to Dismiss.
3. The Motion of the defendant Henry F. Grady to dismiss, with his affidavit in support thereof.
4. The Opinion.
5. The Order entered on or about November 17, 1944 granting the motions of the defendant Federal Reserve Bank of San Francisco and Henry F. Grady to dismiss.
6. The Notice of Appeal.
7. This designation.
8. Designation of appellees of additional matters to be [182] included in the record.
9. Statement of points upon which appellant intends to rely on appeal.

Dated this 15th day of January, 1945.

SANNER, FLEMING & IRWIN
By JOHN AMOS FLEMING
WILLKIE, OWEN, OTIS,
FARR & GALLAGHER
By CARL M. OWEN

Attorneys for Appellant

[Endorsed]: Filed Jan. 18, 1945. [183]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellant herein may have to and including March 5, 1945, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated: January 24, 1945.

MICHAEL J. ROCHE

United States District Judge

[Endorsed]: Filed Jan. 24, 1945. [184]

[Title of District Court and Cause.]

DESIGNATION OF APPELLEE HENRY F.
GRADY, FEDERAL RESERVE AGENT,
OF ADDITIONAL PORTIONS OF REC-
ORD TO BE INCLUDED IN RECORD ON
APPEAL

To the Clerk of the above entitled Court; to the Plaintiff and Appellant, Peoples Bank, and to its attorneys, Messrs. Sanner, Fleming & Irwin and Messrs. Willkie, Owen, Otis, Farr & Gallagher:

Appellee, Henry F. Grady, Federal Reserve Agent, one of the defendants in the above entitled action, hereby designates the following portions of the record to be included in the Record on Appeal in said action in addition to the portions of the

record specified in "Appellant's Designation of Portions of the Record to be Contained in the Record on Appeal," dated [185] January 15, 1945, and filed herein by Plaintiff and Appellant on or about January 18, 1945:

(1) Affidavit of William A. Day in Support of Motion of Defendant Federal Reserve Bank of San Francisco for Summary Judgment, dated May 29, 1944, filed in said action, and received in evidence on October 10, 1944.

(2) Affidavit of W. M. Parker in Opposition to Motion for Summary Judgment of Defendant Federal Reserve Bank of San Francisco, subscribed and sworn to on or about July 19, 1944, filed in said action, and received in evidence on October 10, 1944.

(3) Supplemental Affidavit of William A. Day in Support of Motion of Defendant Federal Reserve Bank of San Francisco for Summary Judgment, dated October 4, 1944, filed in said action, and received in evidence on October 10, 1944.

(4) This designation.

Dated: January 26, 1945.

FRANK J. HENNESSY

United States Attorney

W. E. LICKING

Assistant United States At-
torney

J. P. DREIBELBIS

GEORGE B. VEST

ROBERTSON, LEACHMAN,
PAYNE, GARDERE &
LANCASTER

By WM. L. LEACHMAN
Of Counsel

Attorneys for Defendant and Appellee Henry F.
Grady, Federal Reserve Agent

[Endorsed]: Filed Jan. 26, 1945. [186]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given, that the Federal Reserve Bank of San Francisco, one of the defendants above named, hereby appeals and cross-appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from that part of the Order of the above entitled Court, Honorable Michael J. Roche, Judge presiding, dated the 17th day of November, 1944, and entered in the above entitled cause, which denies the Motion of Defendant Federal Reserve Bank of San Francisco for Summary Judgment.

Dated: February 3, 1945.

ALBERT C. AGNEW

JOHN A. O'KANE

Attorneys for Federal Reserve Bank of San Francisco, Appellee and Cross-Appellant.

[Endorsed]: Filed Feb. 3, 1945. [187]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT FEDERAL RESERVE BANK OF SAN FRANCISCO INTENDS TO RELY ON ITS CROSS-APPEAL

The defendant Federal Reserve Bank of San Francisco, having appealed herein from that part of the Order of the above-entitled Court, entered on or about November 17, 1944, which denies the motion of said defendant for summary judgment, now states the following points on which appellant intends to rely upon said appeal and cross-appeal, namely:

(a) The alternative Motion of Defendant Federal Reserve Bank of San Francisco for Summary Judgment should have been granted by the District Court, if it be held, for any reason, that the District Court erred in granting this defendant's motion to dismiss.

(b) The pleadings and admissions on file, together with the affidavits show that, as between plaintiff and defendant Federal Reserve Bank of

San Francisco, there is no genuine issue as to any material fact and that this defendant is entitled to judgment as a matter of law, pursuant to Rule 56 of Federal Rules of Civil Procedure, and the denial thereof constituted error of the District Court.

Dated: February 5, 1945.

ALBERT C. AGNEW

JOHN A. O'KANE

Attorneys for Federal Reserve Bank of San Francisco, Appellee and Cross-Appellant.

[Endorsed]: Filed Feb. 5, 1945. [189]

[Title of District Court and Cause.]

DESIGNATION OF APPELLANT, FEDERAL
RESERVE BANK OF SAN FRANCISCO,
OF PORTION OF RECORD, PROCEED-
INGS AND EVIDENCE TO BE CON-
TAINED IN RECORD ON APPEAL, ON
ITS CROSS-APPEAL

To the Clerk of the above-entitled Court:

Please prepare and certify Record on Appeal, in the above-entitled action, on the appeal and cross-appeal of defendant Federal Reserve Bank of San Francisco, consisting of the following:

1. Complaint.
2. Motion of Defendant Federal Reserve Bank of San Francisco for Summary Judgment, including Notice of Motion and Memorandum of Points and Authorities in Support thereof.

3. Affidavit of William A. Day in Support of [190] Motion of Defendant Federal Reserve Bank of San Francisco for Summary Judgment.

4. Plaintiff's Motion for Summary Judgment Against the Defendant Federal Reserve Bank of San Francisco.

5. Affidavit of W. M. Parker in opposition to motion for summary judgment of defendant Federal Reserve Bank of San Francisco and in support of plaintiff's Motion for Summary Judgment.

6. Supplemental Affidavit of William A. Day in Support of Motion of Defendant Federal Reserve Bank of San Francisco for Summary Judgment.

7. Affidavit of Henry F. Grady, Federal Reserve Agent, in Support of His Motion to Dismiss.

8. The Opinion.

9. The Order entered on or about November 17, 1944, denying the Motion of the Defendant Federal Reserve Bank of San Francisco for Summary Judgment.

10. The Notice of Appeal, dated February 3, 1945, filed herein the same date.

11. This designation.

12. Designation of cross-appellee, Peoples Bank, of additional matters to be included in the record.

13. Statement of Points on which appellant intends to rely on its cross-appeal.

14. Those certain parts of the Reporter's Transcript of Proceedings at the hearings had October 9 and 10, 1944, stenographically reported by the official reporter of the above-entitled Court (copy of which is filed herewith, in addi- [191] tion to

certified copy delivered by the reporter to the clerk pursuant to 28 U.S.C.A. 9a), as follows:

Page 5, line 16 to and including line 25.

Page 70, line 1 to and including page 72, line 6.

Page 75, line 1 to and including line 22.

Page 114, line 3 to and including line 18.

Page 118, line 18 to and including page 119, line 2

Page 121, line 22 to page 122, line 8.

Page 124, line 11 to line 17.

Page 134, line 22 to and including page 136, line 7.

Page 140, line 1 to line 20.

Page 162, line 25 to and including page 165, line 7.

Page 166, line 18 to and including page 167, line 7.

Page 170, line 18 to and including page 172, line 19.

Page 187, line 4 to and including page 189, line 20.

Page 191, line 4 to and including page 206, line 25.

Dated: February 5, 1945.

ALBERT C. AGNEW

JOHN A. O'KANE

Attorneys for Federal Reserve Bank of San Francisco, Appellee and Cross-Appellant.

[Endorsed]: Filed Feb. 5, 1945. [192]

[Title of District Court and Cause.]

AMENDED DESIGNATION OF APPELLEE
FEDERAL RESERVE BANK OF SAN
FRANCISCO, OF ADDITIONAL POR-
TIONS OF RECORD TO BE INCLUDED
IN RECORD ON APPEAL

To the Clerk of the above-entitled Court; to the Plaintiff and Appellant, Peoples Bank, and to its attorneys, Messrs. Sanner, Fleming & Irwin and Messrs. Willkie, Owen, Otis, Farr & Gallagher:

Appellee, Federal Reserve Bank of San Francisco, one of the defendants in the above-entitled action, now files its amended designation, hereby designating the following portions of the record to be included in the Record on Appeal in said action, in addition to the portions of the record specified in "Appellant's Designation of Portions of the Record to be Contained in the Record on Appeal," dated January 15, 1945, and filed herein by plaintiff and appellant on or about January 18, [193] 1945, as follows:

1. Those certain parts of the Reporter's Transcript of Proceedings at the hearings had October 9 and 10, 1944, stenographically reported by the official reporter of the above-entitled Court, as follows:

Page 5, line 16 to and including line 25.

Page 70, line 1 to and including page 72, line 6.

Page 75, line 1 to and including line 22.

Page 114, line 3 to and including line 18.

Page 118, line 18 to and including page 119, line 2.

Page 121, line 22 to page 122 line 8.

Page 124, line 11 to line 17.

Page 134, line 22 to and including page 136, line 7.

Page 140, line 1 to line 20.

Page 162, line 25 to and including page 165, line 7.

Page 166, line 18 to and including page 167, line 7.

Page 170, line 18 to and including page 172, line 19.

Page 187, line 4 to and including page 189, line 20.

Page 191, line 4 to and including page 206, line 25.

2. This amended designation.

Dated: February 6, 1945.

ALBERT C. AGNEW

JOHN A. O'KANE

Attorneys for Federal Reserve Bank of San Francisco,
Defendant and Appellee.

[Endorsed]: Filed Feb. 6, 1945. [194]

[Title of District Court and Cause.]

AMENDED DESIGNATION OF APPELLANT
PEOPLES BANK, DESIGNATING ADDI-
TIONAL PORTIONS OF THE RECORD TO
BE INCLUDED IN RECORD ON APPEAL

To the Clerk of the above entitled Court; to the
defendant and appellee Federal Reserve Bank
of San Francisco, and to its attorneys Albert
C. Agnew and John A. O'Kane, and to the
defendant and appellee Henry F. Grady, Fed-
eral Reserve Agent, and to his attorneys, Frank

J. Hennessy, W. E. Licking, J. P. Dreibelbis,
George B. Vest and Messrs. Robertson, Leach-
man, Payne, Gardere & Lancaster:

The Appellees having designated to be incorporated in the Record on Appeal herein certain portions of the stenographic transcript of the hearing before the District Court, now as complementary thereto and necessary to the proper understanding thereof Appellant Peoples Bank files its Amended Designation on Appeal, hereby designating the following portions of the record to be included in the Record on Appeal in said action, in addition to the portions specified and designated in its "Appellant's Designation of Portions of the Record to be Contained in the Record on Appeal," dated January 15, 1945, and filed January 18, 1945, as follows:

1. Those certain parts of the Reporter's Transcript of Proceedings at the hearing had October 9th and 10th, 1944, stenographically reported by the official reporter of the above entitled Court, as follows:

Page 21, line 18 to page 22, line 12, inclusive;

Page 72, line 7 to 17, inclusive;

Page 114, line 18, to page 115, line 21, inclusive;

Page 126, line 8, to page 129, line 6, inclusive;

[195]

Page 130, line 17, to page 132, line 7, inclusive;

Page 150, lines 24 to page 151, lines 1 and 2, being the sentence at the bottom of page 150 and top of page 151;

Page 202, last two lines to the end of page 204.

2. This amended designation.

Dated: February 15, 1945.

SANNER, FLEMING & IRWIN

By JOHN AMOS FLEMING

WILLKIE, OWEN, OTIS,

FARR & GALLAGHER

By CARL M. OWEN

Attorneys for Plaintiff and
Appellant.

[Endorsed]: Filed Feb. 19, 1945. [196]

[Title of District Court and Cause.]

DESIGNATION OF CROSS-APPELLEE PEOPLES BANK OF ADDITIONAL PORTIONS OF RECORD TO BE INCLUDED IN RECORD ON CROSS-APPEAL

To the Clerk of the above entitled Court; to the defendant and cross-appellant Federal Reserve Bank of San Francisco, and to its attorneys Albert C. Agnew and John A. O'Kane:

Cross-Appellee, Peoples Bank, plaintiff in the above entitled action, hereby designates the following portions of the record to be included in Record on Cross-Appeal in said action in addition to the portions of the record specified in "Designation of Appellant, Federal Reserve Bank of San Francisco, of Portion of Record, Proceedings and

Evidence to be Contained in Record on Appeal, on its Cross-Appeal," dated February 5, 1945 and filed herein by said defendant and cross-appellant on February 5, 1945, as follows:

1. Those certain parts of the Reporter's Transcript of Proceedings at the hearings had October 9th and 10th, 1944, stenographically reported by the official reporter of the above entitled Court (certified copy of which was delivered by said reporter to the Clerk of this Court pursuant to 28 U.S.C.A. 9(a)) as follows:

Page 21, line 18 to page 22, line 12, inclusive;

Page 72, line 7 to 17, inclusive;

Page 114, line 18, to page 115, line 21, inclusive;

Page 126, line 8, to page 129, line 6, inclusive;

Page 130, line 17, to page 132, line 7, inclusive;

Page 150, lines 24 to page 151, lines 1 and 2, being the sentence at the bottom of page 150 and top of page 151; [197]

Page 202, last two lines to the end of page 204.

2. This designation.

Dated: February 15, 1945.

SANNER, FLEMING & IRWIN

By JOHN AMOS FLEMING

WILLKIE, OWEN, OTIS,

FARR & GALLAGHER

By CARL M. OWEN

Attorneys for Cross-Appellee

[Endorsed]: Filed Feb. 19, 1945. [198]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellant herein may have to and including March 16, 1945 to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated: March 5, 1945.

MICHAEL J. ROCHE

United States District Judge

[Endorsed]: Filed Mar. 5, 1945. [199]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 199 pages, numbered from 1 to 199, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Peoples Bank, Plaintiff, vs. Federal Reserve Bank of San Francisco, Board of Governors of the Federal Reserve System, and Henry F. Grady, Federal Reserve Agent, Defendants, No. 23243 R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and

certifying the foregoing transcript of record on appeal is the sum of \$24.20 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 13th day of March, A. D. 1945.

[Seal]

C. W. CALBREATH,

Clerk

By E. VAN BUREN

Deputy Clerk [200]

[Endorsed]: No. 11002. United States Circuit Court of Appeals for the Ninth Circuit. Peoples Bank, Appellant, vs. Federal Reserve Bank of San Francisco, and Henry F. Grady, Federal Reserve Agent, Appellees, and Federal Reserve Bank of San Francisco, Appellant, vs. Peoples Bank, Appellee. Transcript of Record. Upon Appeals from the District Court of the United States for the Northern District of California, Southern Division.

Filed March 14, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11002

FEDERAL RESERVE BANK OF SAN
FRANCISCO,

Defendant and Appellant,

v.

PEOPLES BANK,

Plaintiff and Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANT FEDERAL RESERVE BANK
OF SAN FRANCISCO INTENDS TO RELY
ON ITS CROSS APPEAL

The defendant Federal Reserve Bank of San Francisco, having appealed herein from that part of the Order of the District Court of the United States for the Northern District of California, Southern Division, entered on or about November 17, 1944, which denies the motion of said defendant for summary judgment, now states the following points on which appellant intends to rely upon said appeal and cross appeal, namely:

(a) The alternative motion of defendant Federal Reserve Bank of San Francisco for summary judgment should have been granted by the said District Court, if it be held, for any reason, that the said District Court erred in granting this defendant's motion to dismiss.

(b) The pleadings and admissions on file, together with the affidavits, show that, as between plaintiff and defendant Federal Reserve Bank of San Francisco, there is no genuine issue as to any material fact and that this defendant is entitled to judgment as a matter of law, pursuant to Rule 56 of Federal Rules of Civil Procedure, and the denial thereof constituted error of the said District Court.

Dated: March 16, 1945.

ALBERT C. AGNEW

JOHN A. O'KANE

Attorneys for Federal Reserve Bank of San Francisco, Appellant.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF APPELLANT FEDERAL
RESERVE BANK OF SAN FRANCISCO
OF NECESSARY PORTIONS OF THE
RECORD, AND PORTIONS OF THE REC-
ORD TO BE PRINTED, ON ITS CROSS
APPEAL

Appellant Federal Reserve Bank of San Francisco, hereby designates the entire record in the above entitled matter, heretofore certified to this Court by the United States District Court for the Northern District of California, Southern Division, as necessary to the consideration of the points on which it intends to rely on appeal, and hereby designates the entire said record to be printed, and

further hereby designates Statement of Points on Which Appellant Federal Reserve Bank of San Francisco Intends to Rely on Its Cross Appeal, filed herewith, and this Designation, to be printed.

Dated: March 16, 1945.

ALBERT C. AGNEW

JOHN A. O'KANE

Attorneys for Federal Reserve Bank of San Francisco, Appellant.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL

The appellant above named, having appealed herein from that part of the Order of the District Court of the United States, Northern District of California, Southern Division, entered on or about November 17, 1944, granting the motions of the defendants Federal Reserve Bank of San Francisco and Henry F. Grady to dismiss, now states the following points on which appellant intends to rely upon said appeal, viz:

1. That the said District Court of the United States erred in granting the motion of defendant Federal Reserve Bank of San Francisco, to dismiss, because:

(a) The said court had jurisdiction of the subject matter of the action;

(b) The said court had jurisdiction of the person of the said defendant Federal Reserve Bank of San Francisco;

(c) The Board of Governors of the Federal Reserve System is not an indispensable party to this action;

(d) Suit against the individual members of the Board of Governors of the Federal Reserve System is not a prerequisite to relief against the defendant bank.

(e) A justiciable controversy exists between the plaintiff and the defendant Federal Reserve Bank of San Francisco;

(f) This suit is timely and the declaratory relief prayed for is immediately appropriate and necessary;

(g) The plaintiff's' complaint states facts sufficient to warrant the relief prayed for therein as against the defendant Federal Reserve Bank of San Francisco.

2. That the said District Court of the United States erred in granting the motion of defendant Henry F. Grady to dismiss, because:

(a) The said court had jurisdiction of the subject matter of the action;

(b) The said court had jurisdiction of the person of the defendant Henry F. Grady;

(c) The Board of Governors of the Federal Reserve System is not an indispensable party;

(d) A justicable controversy exists between the plaintiff and the defendant Henry F. Grady;

(e) The plaintiff's complaint stated facts suf-

ficient to warrant the relief prayed for as against the defendant Henry F. Grady.

Dated: Mar. 14, 1945.

SANNER, FLEMING & IRWIN
By JOHN AMOS FLEMING
WILLKIE, OWEN, OTIS,
FARR & GALLAGHER,
By CARL M. OWEN
KENNETH M. JOHNSON
Attorneys for Appellant.

[Endorsed]: Filed March 14, 1945. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF NECES-
SARY PORTIONS OF THE RECORD AND
PORTIONS OF THE RECORD TO BE
PRINTED

Appellant Peoples Bank hereby designates the entire record in the above entitled matter, heretofore certified to this Court by the United States District Court for the Northern District of California, Southern Division, as necessary to the consideration of the points on which it intends to rely on appeal, and designates the entire said record to be printed, and further designates Statement of Points Upon Which Appellant Intends to Rely on Appeal, filed herewith, and this Designation, to be printed.

Dated: Mar. 14, 1945.

SANNER, FLEMING & IRWIN

By JOHN AMOS FLEMING

WILLKIE, OWEN, OTIS,

FARR & GALLAGHER

By CARL M. OWEN

KENNETH M. JOHNSON

Attorneys for Appellant.

[Endorsed]: Filed March 14, 1945. Paul P.
O'Brien, Clerk.